APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-157

ASTOL CALERO-TOLEDO, SUPERINTENDENT OF POLICE, EDGAR R. BALZAC, ADMINISTRATOR OF THE GENERAL SERVICES ADMINISTRATION OF THE COMMONWEALTH OF PUERTO RICO,
Appellants,

v.

PEARSON YACHT LEASING CO., *Appellee*

ON APPEAL FROM THE UNITED STATES COURT FOR THE DISTRICT OF PUERTO RICO

PETITION FOR WRIT OF CERTIORARI FILED JULY 21, 1973

PROBABLE JURISDICTION NOTED OCTOBER 9, 1973

[Documents Printed in Appellants' Jurisdictional Statement and Not Reprinted in This Appendix]

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APPENDIX

[8] IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

Civil No. 1018-72

PEARSON YACHT LEASING COMPANY,
DIVISION OF GRUMMAN ALLIED INDUSTRIES INC.,
Plaintiff,

VS.

LUIS TORRES MASSA, AS SUPERINTENDENT OF POLICE OF THE COMMONWEALTH OF PUERTO RICO, AND MANUEL MARTINEZ SUAREZ, AS CHIEF OF THE OFFICE OF TRANSPORTATION OF THE COMMONWEALTH OF PUERTO RICO, *Defendants.*

Complaint

TO: THE HONORABLE COURT:

The Plaintiff, complaining of the defendants by its undersigned attorneys, does respectfully allege and pray:

1. This is an action to redress the deprivation under color of law of the Commonwealth of Puerto Rico of rights secured to the plaintiff by the FIFTH and FOURTEENTH Amendments of the Constitution of the United States of America.

2. Jurisdiction is conferred on this Court by 28 U.S.C. § 1343.

3. Plaintiff is a New York Corporation engaged in the chartering and/or leasing of vessels in the United States of America including the chartering and leasing of vessels for use in the navigable waters of the Commonwealth of Puerto Rico.

4. The defendant Luis Torres Massa is the Superintendent of the Police of the Commonwealth of Puerto Rico

and as such is directly in charge of enforcing the criminal laws of the Commonwealth of Puerto Rico, including Title 24 § 2101—The Controlled Substances Act of Puerto Rico, [9] June 23, 1971. (24 L.R.P.A. §§ 2101-2607)

5. That defendant Manuel Martinez Suarez is the Chief of the Office of Transportation of the Commonwealth of Puerto Rico.

6. That pursuant to § 2512(a), (4) and (b), the defendant Luis Torres Massa was empowered to confiscate and subject to forfeiture to the Commonwealth of Puerto Rico "all conveyances, including aircraft, vehicles, and mount or vessels which are used or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of all controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of the Act."

7. Defendant Luis Torres Massa is further empowered to seize any property subject to forfeiture under the provisions of 24 L.P.R.A. § 2512 (a) (4) by process issued pursuant to Act of June 4, 1960, as amended, known as the Uniform Vehicle, Mount, Vessel and Plane Seizure Act, §§ 1721 and 1722 of Title 34.

8. Pursuant to the powers conferred by 24 L.P.R.A. § 2512 (a) (4) and (b), defendant Luis Torres Massa, through his delegates, policemen and/or other agents, on July 11th, 1972 seized the following property:

1—Pearson 300, Hull No. 127 with following equipment:

Bow Rail; Lifelines; 2 Boarding Gates; Stern Rail; Genoa Gear; Sea Hood; H & C Water Pressure System; Shower; Edson Wheel w/compass; Edson Brake; Interior Handrails; Ex. Water Tank; 2 additional Opening Ports; Two-Tone Deck; Electric Bilge Pump; Fabric Cushions; Carpets; Curtains; Diesel Engine;

Winches; Stove; Roller Furling; Roller Reefing; Salt Water Pump; Cockpit Cushions; Tachometer and 2 Dorado Ventilators; and Mainsail; Jib and Sail Cover.

9. At the time of the seizure of the aforesaid property by the defendant Luis Torres Massa, the same was in possession of Donovan Olson and Loretta Olson pursuant to a bareboat charter with plaintiff, copy of which is annexed [10] hereto as "Exhibit A" of the complaint.

10. Pursuant to the provisions of the Uniform Vehicle, Mount, Vessel and Plane Seizure Act, 34 L.P.R.A. § 1722 (a), the defendant Luis Torres Massa through his officers, agents and/or employees served notice of the seizure upon the lessee of the aforesaid property by mailing to him copy thereof at his known address.

11. That at the time of the seizure and at the time of service of notice of seizure, the lawful owner of the seized property was Pearson Yacht Leasing Company, a Division of Grumman Allied Industries, Inc.

12. That the plaintiff herein has never been notified of the seizure in accordance with the requirements of 34 L.P.R.A. § 1722 (a).

13. Plaintiff was unaware of the action taken by defendant Luis Torres Massa until the 19th day of October 1972 when its representative in Puerto Rico attempted to recover possession of the vessel in the manner provided by paragraph seven (7) of the charter ("Exhibit A"). On October 19th, 1972, the plaintiff's representative learned of the seizure and was unable to take possession, custody or control of the vessel.

14. The property seized is being detained, upon information and belief, at a Police Marina, in Boqueron, Puerto Rico, under the physical custody and control of agents, policemen and/or employees of defendant Luis Torres Massa.

15. Pursuant to the provisions of 34 L.P.R.A. § 1722 (b) the property seized by defendant Luis Torres Massa, has been placed under the legal custody of defendant Manuel Martinez Suarez, who is the Chief of the Office of Transportation of the Commonwealth of Puerto Rico.

16. Upon information and belief, defendant Manuel Martinez Suarez, pursuant to the powers conferred upon him by Statute 34 L.P.R.A. § 1722 (b) has appraised the property in question in the sum of $19,500.00 and intends to hold the same as legal owner thereof. Plaintiff further [11] contends that the appraisal value of the property is insufficient.

17. The defendants, Luis Torres Massa and Manuel Martinez Suarez, acting jointly and in concert, intend to deprive plaintiff of its property and to appropriate the same for the use of the Police Department of the Commonwealth of Puerto Rico.

18. The defendants, Luis Torres Massa and Manuel Martinez Suarez have proceeded under color of Act Number 4 of June 23, 1971 (24 L.P.R.A. § 2512 (a), (4) and (b)), and Act Number 39 of June 4, 1960, (34 L.P.R.A. § 1722).

19. The actions of the defendants have deprived the plaintiff under color of law of rights, privileges and immunities secured by the Constitution of the United States of America in the following respects:

(a) Act Number 4 of June 23, 1971 (24 L.P.R.A. 2512(a)) and Act Number 39 of June 4, 1960 (34 L.R.P.A. §1722)) are unconstitutional in that they do not require that notice of the seizure be given to the owner of the property so seized and thus, with respect to the plaintiff, is a denial of due process of law and of the equal protection of the laws. The plaintiff herein has been denied the right to judicially challenge the validity and constitutionality of the seizure as provided by 34 L.P.R.A. § 1722

(a) and (c) because the fifteen (15) days limitation within which to challenge the seizure following the service of the notice of seizure, has already elapsed. Since plaintiff was never notified of the seizure it could not take the necessary steps to challenge the seizure or otherwise protect its property.

(b) The seizure by the defendant Luis Torres Massa, his agents, policemen and/or employees without notification or opportunity to be heard, deprived the plaintiff of due process of law, the equal protection of the laws and its property without compensation therefor.

(c) That statutes under which the defendants have acted are contrary to the due process and the "Taking" [12] clauses of the FIFTH and FOURTEENTH Amendments of the United States Constitution in that the seizure of plaintiff's property, an innocent party to the criminal act for which the property was seized and subject to forfeiture, is penal and causes an unconstitutional deprivation of personal property without just compensattion.

20. That unless the Court restrains the defendants from using the property subject to forfeiture and disposing of it in the manner alleged in this complaint, great and irreparable injury will result to plaintiff in that the same may be lost, damaged, depreciated, or otherwise destroyed.

WHEREFORE, It is respectfully prayed that this Honorable Court:

1. Enter a preliminary and permanent injunction restraining the defendants, their agents, policemen, subordinates and/or employees from taking any further action to appropriate the plaintiff's property and from pursuing any action whatsoever for the purpose of recording title to said property in the name of the Office of Transportation of the Commonwealth of Puerto Rico and/or the Department of Police of the Commonwealth of Puerto Rico.

2. Enter a preliminary and permanent injunction prohibiting the defendants, their agents, policemen, subordinates and/or employees from using, navigating, operating or moving the seized property until such time as otherwise provided by this Court.

3. Enter a preliminary and permanent injunction directing the defendants to deliver to plaintiff the seized property.

4. Declare Acts Number 4 of June 23, 1971 (24 L.P.R.A. § 2512 (a), (4) and (b), and Act Number 39 of June 4, 1960 (34 L.P.R.A. § 1722) of the Commonwealth of Puerto Rico unconstitutional as applied to plaintiff in the circumstances of this case, and enjoin its enforcement against the property of plaintiff.

[13] 5. Grant such other further relief as in the circumstances may be warranted.

In San Juan, Puerto Rico, this 6th day of November, 1972.

NACHMAN, FELDSTEIN,
GELPI & ANTONETTI
Attorneys for Plaintiff
P.O. Box 2407
San Juan, Puerto Rico 00903

/s/ GUSTAVO A. GELPI

[JURAT OMITTED]

[14] PEARSON YACHT LEASING COMPANY

DIVISION OF GRUMMAN ALLIED INDUSTRIES, INC.

Lease Contract No. 405

LEASE AGREEMENT, hereinafter called the "Lease", made and entered into in Garden City, Nassau County, State of New York, this 15th day of March 1971, by and between Pearson Yacht Leasing Company, Division of Grumman Allied Industries, Inc., a corporation incorporated under the laws of the State of New York, and having its principal office at 600 Old Country Road, Garden City, N. Y., hereinafter called the "Lessor", and Donovan & Loretta Olson, hereinafter called the "Lessee".

WITNESSETH:

1. Lessor hereby leases to Lessee, and Lessee hereby hires from Lessor, the vessel and accessories, hereinafter "Equipment", described in Schedule "A", hereto annexed and made a part hereof, upon the terms and conditions contained in this agreement.

2. This Lease is for the term of 60 months from the date of delivery of the Equipment described in the aforementioned Schedule "A", during which term Lessee will pay Lessor as rent for the use of the Equipment in accordance with this agreement and the schedule covered by Schedule "B", hereto annexed and made a part hereof.

Payment of said rent shall commence as of the date of the Lease and shall continue on the same date each and every month thereafter for the term of this Lease. Late payments of rentals shall be charged 1½% monthly on delinquent amounts.

3. (a) Lessee shall furnish at its own cost and expense gasoline or other fuel, lubricants, grease, anti-freeze solution, and replacement parts and supplies appropriate for the use and operation of the Equipment leased hereunder,

and shall service, repair and maintain all said Equipment in good condition, but Lessee shall not be responsible for normal wear, tear and depreciation. Lessee is to have the benefit of any manufacturer's warranty as to each Equipment and all accessories thereon.

(b) Lessee shall permit Lessor to inspect any and all said Equipment upon Lessee's premises or elsewhere at any reasonable time, and cooperate fully to facilitate such inspections.

(c) Lessee shall pay any license fees, tolls, taxes levied by federal, state or municipal governments or authorities against said Equipment and also all costs of any inspection required by the state in which Lessee keeps and operates such Equipment.

4. (a) Prior to the delivery of said Equipment, Lessee shall at its own expense furnish the Lessor with insurance policies with loss payable clause to Lessor placed with insurance company satisfactory to Lessor with premiums paid, insuring Lessor against damages, loss or destruction of the Equipment under this lease sustained in any manner whatsoever in an amount of not less than the replacement value of said Equipment.

Lessee shall also obtain and furnish Lessor public liability insurance policies with insurance company satisfactory to Lessor with premiums paid, insuring Lessor against damages or claims for personal injuries arising in any manner out of the operation or use of said Equipment. Said policy or policies to contain limits of $200,000 to $500,000 and against damages for claims for property damages in an amount not less than Fifty Thousand Dollars ($50,000).

In case of failure of the Lessee to procure and maintain said insurance and pay the premiums therefor, in addition to any and all other remedies to the Lessors as contained

in this Lease, Lessor may effect such insurance, in which event the cost thereof shall be payable by the Lessee as additional rent with the next month's installment of rent.

(b) Lessee hereby assumes all liability for, and agrees to save Lessor harmless against all loss imposed by law resulting from the use or operation, during the term of the Lease hereunder, of Equipment leased hereunder and arising out of death or bodily injury to Lessee or any other or different person or persons and/or damage to property belonging to Lessee or to any other or different person or persons. Lessee agrees to defend at its own expense all claims or suits for damages for the causes hereinbefore set forth and to pay all costs hereof.

(c) The damage, destruction, loss, disability or forfeiture of said Equipment shall not discharge or diminish the [15] obligation of Lessee to pay rent as provided in this agreement, except as may be otherwise mentioned herein.

(d) In the event the leased Equipment is damaged, its repair shall be the responsibility and obligation of the Lessee. In every such instance, Lessor agrees to assign to Lessee any and all rights Lessors may have under insurance policies owned or controlled by Lessor with respect to such damage, as well as any rights Lessor may have to be reimbursed for such damage pursuant to insurance coverage carried by others, provided that the Lessee shall not then be in default of any of the terms and conditions of the lease on its part to be performed.

(e) In the event the leased Equipment is destroyed, stolen, or damaged to such extent that Lessee finds it undesirable to continue its use, all of the Lessor's right, title and interest in the Equipment, together with any and all rights it may have with respect to such Equipment under insurance carried by others, shall be assigned to Lessee or its designee upon payment by Lessee of the remaining unpaid rental payments as to such Equipment up to the

end of the contract term (proportionately adjusted to reflect the deduction in Lessor's financial or carrying costs).

5. Lessee agrees that Lessor may assign all right, title and interest of Lessor in and to such lease agreements, all monies due and to become due thereon, and the Equipment leased hereby, and Lessee agrees, if requested by such assignee, to pay direct to such assignee all monies due and to become due by it on such lease agreements. Lessee may, upon written consent of Lessor, assign its interest in this agreement as to the Equipment described in Schedule "A". All benefits, rights and liabilities then existing shall flow to and be assumed by the assignee, but without relieving the assignor of any liability hereunder.

6. Lessee may use the Equipment leased hereunder at any and all times for any and all legal purposes. Lessor shall not use or suffer or permit any Equipment to be used for any unlawful purpose or for the transportation of any property or material deemed extra hazardous, explosive or inflammable.

7. In case of the Lessee's failure to pay the rentals provided for above, or to fulfill or perform the conditions imposed upon the Lessee by this lease, the Lessor shall give written notice to the Lessee of such dfault. If th condition is not corrected within fifteen (15) days after date of written notice, the Lessor shall have the right, at its option, to declare all unpaid rentals forthwith to be due and payable and to terminate this agreement and Lessor shall have the right:

(a) To enter any premises where any Equipment may be, with or without the assistance of any person or persons, and to take, retake and remove the same, including all substituted parts and accessories, without being liable to any suit, action, defense, or other proceedings by the Lessee, and to hold, use, sell, lease or otherwise dispose of any of said Equipment or to keep said Equipment idle, severally

or entirely as the Lessor may elect, such election by the Lessor to have no effect upon Lessee's liability under this agreement, or Lessor's rights hereunder and, upon such possession or repossession, all Lessee's rights herein and thereto, shall cease and determine.

(b) If the Lessee, or its agents, shall fail or refuse to deliver, or shall convert or destroy any of the lease property, the Lessor shall have the right, as an alternative in place of subdivision (a) hereof, and in addition to such other remedies as are available to it hereunder, to hold the Lessee and its said agents liable for the value of the said withheld or destroyed property.

(c) If any action shall be brought by either party to this lease for the interpretation thereof, for the recovery of damages resulting from the breach of any term thereof, the prevailing party to such action shall be entitled to reasonable attorney's fees incurred thereby, and said fees shall be included in the judgment awarded in such action to the prevailing party. Lessee does hereby further covenant and agree that all rights and remedies hereunder are cumulative and not exclusive and that a waiver by Lessor of any breach by Lessee of the terms, covenants and conditions hereof, shall not constitute a waiver of future breaches or defaults.

8. If before the commencement of the term of this agreement, or at any time during the term, Lessee shall make an assignment for the benefit of creditors, or shall become insolvent, or if a receiver or trustee of Lessee's property shall be appointed, or if the Lessee (where it is a corporation) shall terminate its existence or take any steps to terminate its existence, or if a petition is filed by or against Lessee pursuant to any of the provisions of the United States Bankruptcy Act, as amended, for the purpose of effecting an arrangement or composition with Lessee's creditors, then and in each and every such case, this agreement shall terminate forthwith, without any further act or

notice by the Lessor, and the Lessor shall immediately have any and all of the rights forth herein including, but not limited to, paragraphs designated "7" and "12" hereof.

9. The Equipment shall be based at the home port of Lessee, as of contract date, and shall not be moved to a new permanent location without the written consent of the Lessor. Lessee may sublet Equipment to a third party only with the written approval of the Lessor.

10. All said Equipment shall remain personal property of the Lessor and the title thereto shall remain in the Lessor exclusively. Lessee shall keep the Equipment free from any and all liens and encumbrances. Upon termination of the Lease the Equipment shall be returned to Lessor, at Lessee's sole expense, and in the same condition as when re-
[16] ceived by Lessee, less reasonable wear and tear resulting from proper use thereof. All replacement parts, additions and accessories incorporated in or affixed to the Equipment after the commencement of the Lease shall become the property of the Lessor.

11. Lessor agrees together with Lessee that Lessor is the lawful owner of said Equipment free from all encumbrances, and that, conditioned upon Lessee's performing the provisions hereof, Lessee shall use and maintain the Equipment in a rightful manner during said term without interference. The Lessor or any assignee of Lessor is authorized to file any Financial Statements without the signature of the Lessee.

12. Upon termination of this agreement, as provided by paragraphs numbered "7" and "8", or otherwise, the Lessor, in addition to any or different rights in this agreement provided, shall be entitled to all gains and/or profits prevented and damages sustained, liquidated herein for all purposes including claims and suits against the Lessee's assets in bankruptcy, reorganization or arrangement proceedings, or pursuant to other provisions of the United

States Bankruptcy Act, or in any assignment for the benefit of creditors proceedings as follows:

(a) All sums due and unpaid at the time agreement is terminated.

(b) The total of all sums which would have become due under the normal operation of this agreement from the date of such termination to the date it would have normally expired had it not been earlier terminated.

In determining said liquidated damages, the parties have made due allowances for the Lessor's investment in buying and/or reconditioning the leased Equipment, the uncertainty of leasing them to others, cost to Lessor for the period during which they may remain idle, or if sold, the uncertainty of the sales price and the Lessor's loss in selling said Equipment, commissions and legal expense to be paid, etc.

13. Nothing contained in this agreement shall affect the Lessor's right to receive payment from a Trustee, Receiver, Debtor or other representative of the Lessee, in bankruptcy, reorganization or arrangement proceedings, or otherwise, or from an Assignee for the Benefit of Creditors, for the use of the Equipment subsequent to the termination of this agreement; provided, however, that the payment received therefrom shall be offset against the liquidated damages provided for in paragraph "12" above.

14. This agreement shall extend to and be binding upon the successors and assigns of the parties hereto.

15. All notices to be given to Lessor shall be given by depositing the same in the United States mail, registered or certified, postage prepaid and addressed to Lessor as follows: Pearson Yacht Leasing Company, 600 Old Country Road, Garden City, N.Y. 11530.

All notices to be given to Lessee shall be given by depositing the same in the United States mail, registered or

certified, postage prepaid and addressed to Lesee as follows:

Mr. & Mrs. Donovan Olson, Blvd. Monroig AX 36, Levittown Catano, Puerto Rico.

16. The Lessor is authorized to file any required financing statement without the signature of the debtor.

17. This agreement, with Schedule "A" and Schedule "B" affixed hereto and made part hereof, constitute the entire agreement and understanding of the Lessor and Lessee, and shall not be amended or altered in any way unless such amendment or alteration be endorsed hereon in writing and signed by the executive officers of both parties or, if the Lessee is not a Corporation, by the Lessee in person.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly executed, in triplicate, as of the day and year first above written.

LESSOR: PEARSON YACHT LEASING COMPANY

By ROBERT F. LOAR, Director
Robert F. Loar

LESSEE: DONOVAN & LORETTA OLSON

By /s/ DONOVAN OLSON
Donovan Olson

LORETTA OLSON

[17] SCHEDULE "A"

This Schedule "A" is part of and subject to the Lease Agreement No. 405, between Pearson Yacht Leasing Company, "Lessor", and Donovan & Loretta Olson, "Lessee", dated March 15, 1971.

Description

1—Pearson 300, Hull No. 127 with the following equipment: Bow Rail; Lifelines; 2 Boarding Gates; Stern Rail; Genoa Gear; Sea Hood; H & C Water Pressure System; Shower; Edson Wheel w compass; Edson Brake; Interior Handrails; Ex. Water Tank; 2 Add'l Opening Points; Two-Tone Deck; Electric Bilge Pump; Fabric Cushions; Carpets; Curtains; Diesel Engine; Winches; Stove; Roller Furling; Roller Reefing; Salt Water Pump; Cockpit Cushions; Tachometer and 2 Dorade Ventilators, and Mainsail; Jib and Sail Cover.

LESSOR: PEARSON YACHT LEASING COMPANY
By /s/ ROBERT F. LOAR
Robert F. Loar
Director

LESSEE DONOVAN & LORETTA OLSON

By /s/ DONOVAN OLSON
Donovan Olson Title

/s/ LORETTA OLSON
Loretta Olson

Executed in Triplicate this
15th day of March, 1971

[18] SCHEDULE "B"

This Schedule "B" is part of and subject to the Lease Agreement No. 405, between Pearson Yacht Leasing Company, "Lessor", and Donovan & Loretta Olson, "Lessee", dated March 15, 1971.

RENTAL CHARGES

Price Basis		*Per Unit Monthly*
Based on Unit Price of	$23,983.00	$474.66*
Less: Down Payment	2,887.00	
Amount Financed	$21,096.00	

* *NOTE*: Late payment of rentals are charged 1½% monthly on delinquent amounts.

Annual Percentage Rate: 12.50%

LESSOR: PEARSON YACHT LEASING COMPANY

By /s/ ROBERT F. LOAR
Robert F. Loar
Director

LESSEE DONOVAN & LORETTA OLSON

By /s/ DONOVAN OLSON
Donovan Olson Title

/s/ LORETTA OLSON
Loretta Olson

Executed in Triplicate this
15th day of March, 1971

[19] ADDENDUM No. 1

This Addendum No. 1 is part of and subject to the Lease Agreement No. 405, between Pearson Yacht Leasing Company, "Lessor", and Donovan & Loretta Olson, "Lessee", dated March 15, 1971.

Lessee is hereby given the right and privilege, at its option, to purchase vehicles described in Schedule "A" of this lease, at the respective option prices for the periods of time indicated below, provided that all rents theretofore due and payable have paid in full.

Percentage Depreciation—Option Period

Option Period	*Option Price Per Unit*
End of 1st year	$18,092,24
" " 2nd year	14,456.72
" " 3rd year	10,239.44
" " 4th year	5,440.40
" " 5th year	1.00

The option to purchase shell be exercisable by Lessee by giving Lessor not less than thirty (30) days notice in writing prior to the expiration of the 60 months term. Lessor covenants and agrees that upon exercise of the option Lessor shall duly execute and deliver to the Lessee all documents necessary and proper to effect transfer of ownership of said vehicles to Lessee, free and clear of all encumbrances and liens (other than encumbrances or liens suffered or permitted by Lessee to become effective thereon) upon payment by the Lessee in cash or certified check of the full balance of said option price and thereupon this lease shall terminate and no further rents shall become

due thereunder with reference to the vehicles leased by the Lessee.

LESSOR: PEARSON YACHT LEASING COMPANY

By /s/ ROBERT F. LOAR
Robert F. Loar Director

LESSEE: DONOVAN & LORETTA OLSON

By /s/ DONOVAN OLSON
Donovan Olson Title

/s/ LORETTA OLSON
Loretta Olson

Executed in Triplicate this
15th day of March, 1971

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[20] IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

Civil No. 1018-72

[Caption Omitted]

Motion For A Preliminary Injunction and Order To Show Cause To Convene a Three Judge Court

TO: THE HONORABLE COURT:

The Plaintiff, by its undersigned attorneys, does respectfully move this Court for a preliminary injunction and to issue an order to show cause addressed to the defendants, why a preliminary injunction should not issue until the constitutionality of their acts can be determined by a three judge court, convened in accordance with the provisions of 28 U.S.C. § 2284, and as grounds for this motion does respectfully show:

1. The plaintiff on this date filed a verified complaint setting forth the grounds on which plaintiff contends that it is being deprived of its rights, privi-

leges and immunities under the Constitution of the United States of America.

2. The deprivation of those rights, privileges and immunities by defendant under color of law, will continue indefinitely unless restrained and enjoined by order of this Honorable Court.

[21] 3. Since a three judge court, as requiired by the provisions of 28 U.S.C. § 2284, cannot, for practical reasons, be convened forthwith; irreparable injury, loss and damage to plaintiff, as more particularly appears in the verified complaint together with this motion, before a decision on the legality and constitutionality of the forfeiture may be rendered.

4. The issuance of a preliminary injunction herein will not cause undue inconvenience or loss to defendents but will prevent irreparable injury to the plaintiff.

WHEREFORE, it is respectfully prayed that this Honorable Court issue an order to show cause addressed to defendants, Luis Torres Massa, Superintendent of Police of the Commonwealth of Puerto Rico and Manuel Martinez Suarez, Chief of the Office of Transportation of the Commonwealth of Puerto Rico, requiring them to show cause why they should not be restrained and enjoined in the manner prayed for in the complaint.

San Juan, Puerto Rico, this, 6th day of November, 1972.

NACHMAN, FELDSTEIN,
GELPI & ANTONETTI
Attorneys for Plaintiff
P. O. Box 2407
San Juan, Puerto Rico 00903

/s/ GUSTAVO A. GELPÍ
Gustavo A. Gelpí

[22] IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

Civil No. 1018-72

[Caption Omitted]

Motion To Convene a Three Judge Court

TO: THE HONORABLE COURT:

The Plaintiff, by its undersigned attorneys does respectfully move this Court to convene, for the purposes of hearing and determining this cause, a statutory court of three judges, at least one of whom shall be a circuit judge, in accordance with the provisions of § 2284, Title 28, United States Code.

San Juan, Puerto Rico, this 6th day of November, 1972.

NACHMAN, FELDSTEIN,
GELPI & ANTONETTI
Attorneys for Plaintiff
P. O. Box 2407
San Juan, Puerto Rico 00903

/s/ GUSTAVO A. GELPÍ
Gustavo A. Gelpí

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[33] IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

Civil No. 1018-72

[Caption Omitted]

Motion in Opposition to Convening of a Three Judge Court

To THE HONORABLE COURT:

Now come defendants in the above captioned case and through the undersigned attorneys respectfully oppose the

convening of a three judge court in the present matter for the reasons set forth in the accompanying Memorandum.

Respectfully submitted.

San Juan, Puerto Rico, November 30, 1972.

WALLACE GONZALEZ OLIVER
Attorney General

FELIPE B. MONTALVO
Assistant Attorney General

NELLIE ORTIZ TORRES, Director
General Litigation Division

By: /s/ WILLIAM A. POWER
William A. Power
Attorney, Department of Justice

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

[35] **Minutes of Proceedings**

Date Dec. 13, 1972, Judge Toledo (In Chambers), Reporter Waived Civil 1018-72

Pearson Yacht Leasing Company, etc. Plaintiff—For plaintiff Gustavo Gelpi vs. Luis Torres Massa, as Superintendent of Police of the Commonwealth of P.R., et al, Defendant—For defendant William Powers

Case called for hearing in Chambers on the application and motion to convene a three judge court and on opposition of defendant. Statement of counsel for plaintiff heard. Statement of attorney for plaintiff heard as to whether this Court should abstain from ruling on the Constitutional question which is challenged. He requests a three judge court be convened, and states he will go to the Local Court only as to the Commonwealth Law, but will come to the Federal Court as to the Federal question. Statement of attorney for the Department of Justice of Commonwealth of P.R. heard. Attorney for plaintiff states

he will not submit to the local Court the Federal question. Court states he will consider the stipulation filed on this date together with the rest of the file and will render an opinion. He further states that if he decides to call a three judge court the Court is entitled to enter a restraining order in which case the plaintiff will have to set a bond. Attorney for plaintiff states they are ready to set up bond. Attorney for defendants oppose the convening of a three judge court. Court states counsel for both parties shall have ten days from today to file simultaneous memorandum. Counsel to let the Court know if they are not going to file memos.

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[36] IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

Civil No. 1018-72

[Caption Omitted]

Stipulations

To: THE HONORABLE COURT:

COME Now the parties through their undersigned attorneys and for the purpose of simplifying factual questions and to avoid the necessity of an evidentiary hearing, do hereby enter into the following stipulations:

1. Plaintiff is a New York corporation engaged in the chartering and/or leasing of vessels in the United States of America, including the chartering and leasing of vessels for use in the navigable waters of the Commonwealth of Puerto Rico.

2. The defendant, Luis Torres Massa, is the Superintendent of the Police of the Commonwealth of Puerto Rico and as such is directly in charge of enforcing the criminal laws of the Commonwealth of Puerto Rico, including the provisions of Title 24, §§ 2101, The Controlled Substances Act of Puerto Rico, June 23, 1971 (24 L.P.R.A. §§ 2101-2607).

3. The defendant, Manuel Martínez Suárez, is the Chief of the Office of Transportation of the Commonwealth of Puerto Rico.

4. That pursuant to § 2512(a), (4) and (b), the defendant, Luis Torres Massa, was empowered to confiscate [37] and subject to forfeiture to the Commonwealth of Puerto Rico "all conveyances, including aircraft, vehicles, and mount or vessels which are used or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of all controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of the Act."

5. Defendant, Luis Torres Massa, is further empowered to seize any property subject to forfeiture under the provisions of 24 L.P.R.A. § 2512(a)(4) by process issued pursuant to Act of June 4, 1960, as amended, known as the Uniform Vehicle, Mount, Vessel and Plane Seizure Act, §§ 1721 and 1722 of Title 34.

6. Pursuant to the powers conferred by 24 L.P.R.A. §§ 2512(a)(4) and (b), defendant, Luis Torres Massa, through his delegates, policemen and/or other agents, on July 11th, 1972 seized the following property:

1—Pearson 300, Hull No. 127 with the following equipment:

Bow Rail; Lifelines; 2 Boarding Gates; Stern Rail; Genoa Gear; Sea Hood; H&C Water Pressure System; Shower; Edson Wheel w/compass; Edson Brake; Interior Handrails; Ex. Water Tank; 2 additional Opening Ports; Two-Tone Deck; Electric Bilge Pump; Fabric Cushions; Carpets; Curtains; Diesel Engine; Winches; Stove; Roller Furling; Roller Reefing Salt Water Pump; Cockpit Cushions; Tachometer and 2 Dorado Ventilators; and Mainsail; Jib and Sail Covers.

7. At the time of the seizure of the aforesaid property by the defendant, Luis Torres Massa, the same was in the

possession of Donovan Olson and Loretta Olson purusant to a bareboat charter with plaintiff, copy of which is annexed hereto "Exhibit A".

[38] 8. Pursuant to the provisions of the Uniform Vehicle, Mount, Vessel and Plane Seizure Act, 34 L.P.R.A. § 1722 (a), the defendant, Luis Torres Massa, through his officers, agents and/or employees served notice of the seizure upon the lessee of the aforesaid property by mailing to him copy thereof at his know address. The notice of seizure was sent to Donovan Olson, who registered with the Ports Authority of the Commonwealth of Puerto Rico and was given a number to operate the vessel in question, as required by the provisions of Title 23 §§ 451 sub-paragraphs (a), (b) and (c).

9. That at the time of the seizure and at the time of service of notice of seizure, the lawful owner of the seized property was Pearson Yacht Leasing Company, a Division of Grumman Allied Industries, Inc.

10. That the plaintiff herein has never been notified of the seizure. The plaintiff has never registered or requested a number at the Division of Marine Operations of the Maritime Department of the Ports Authority in the manner and form provided by § 451, sub-paragraphs (a), (b) and (c) of Title 23.

11. The property seized is being detained, upon information and belief, at a Police Marine, in Boqueron, Puerto Rico, under the physical custody and control of agents, policemen and/or employees of defendant Luis Torres Massa.

12. Pursuant to the provisions of 34 L.P.R.A. § 1722 (b) the property seized by defendant Luis Torres Massa, has been placed under the legal custody of defendant Manuel Martínez Suárez, who is the Chief of the Office of Transportation of the Commonwealth of Puerto Rico.

13. Upon information and belief, defendant, Manuel Martínez Suárez, pursuant to the powers conferred upon him by Statute 34 L.P.R.A. § 1722(b) has appraised the

property in question in the sum of $19,800.00 and intends to hold the same as legal owner thereof.

[39] 14. The defendants, Luis Torres Massa, and Manuel Martínez Suárez, have proceeded under the authority conferred by Act 4 of June 23, 1971 (24 L.P.R.A. § 2512(a), (4)(b) and Act No. 39 of June 4, 1960, (34 L.P.R.A. § 1722).

15. The plaintiff had no knowledge that its property was being used in connection with or in violation of the Controlled Substance Act of the Commonwealth of Puerto Rico. Defendants concede that plaintiff corporation, its agents, employees and/or representatives were in no way whatsoever involved in the criminal enterprise carried on by lessee, Donovan Olson. (Lessee was accused of using the plaintiff's property on May 6, 1972 to convey, transport, carry and transfer a narcotic drug known as "marijuana", within the ward of La Parguera, in violation of law).

The foregoing facts and issues are stipulated by and between the parties, this 12th day of December, 1972, at San Juan, Puerto Rico.

NACHMAN, FELDSTEIN
GELPI & ANTONETTI
Attorneys for Plaintiff

By: /s/ GUSTAVO GELPÍ
Gustavo Gelpí

WALLACE GONZALEZ OLIVER
Attorney General

FELIPE B. MONTALVO
Assistant Attorney General

NELLIE ORTIZ TORRES, Director
General Litigation Division

WILLIAM A. POWER
Attorney, Department of Justice

Attorneys for Defendants

By: /s/ WILLIAM A. POWER
William A. Power

[40] IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

Civil No. 1018-72

[Caption Omitted]

Motion Submitting to the Convening of a Three Judge Court

To THE HONORABLE COURT:

Now come defendants in the above captioned case and respectfully allege and pray as follows:

That after a thorough study of the point of law in question defendants respectfully submit to the convening of a three judge court in the present case.

Respectfully submitted.

San Juan, Puerto Rico, December 21, 1972.

WALLACE GONZALEZ OLIVER
Attorney General

FELIPE B. MONTAVO
Assistant Attorney General

NELLIE ORTIZ TORRES, Director
General Litigation Division

LUIS BERRIOS AMADEO
Attorney, Department of Justice

By: /s/ WILLIAM A. POWER
William A. Power
Attorney, Department of Justice

[42] UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

Civil No. 1018-72

[Caption Omitted]

Pursuant to the authority and command of 28 U.S.C. § 2284, I hereby designate and assign the Honorable Frank M. Coffin, United States Court of Appeals for the First Circuit, and the Honorable Jose V. Toledo, United States District Judge for the District of Puerto Rico to sit with the Honorable Hiram R. Cancio, United States District Judge for the District of Puerto Rico in the above-entitled cause, a three-judge district court being required by 28 U.S.C. § 2281.

/s/ FRANK M. COFFIN
Frank M. Coffin, Chief Judge,
First Circuit

Dated: January 18, 1973

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[43] IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

Civil No. 1018-72

[Caption Omitted]

Answer to Complaint

TO THE HONORABLE COURT:

Now come defendants in the above case and through the undersigned attorneys, respectfully allege and pray as follows:

1. Allegation number one does not merit a responsive answer.

2. Allegations number 2, 3, 6, 7, 8, 9, 11, 14 and 15 are admitted.

3. Allegation number 13 is denied for lack of information.

4. Allegations number 17, 18, 19 and 20 are denied.

5. Allegation number 4 is admitted but it must be clarified that at the present moment Luis Torres Massa is not the Superintendent of the Police of the Commonwealth of Puerto Rico.

6. Allegation number 5 is admitted but it must be clarified that at the present moment Manuel Martínez Suárez is not the Chief of the Office of Transportation of the Commonwealth of Puerto Rico.

7. Allegation number 10 is admitted but it must be clarified however, that the notice of the seizure was sent to Donovan Olson, the lessee of the property, who registered with the Ports Authority of the Commonwealth of Puerto Rico and was given a number to operate the vessel in question, as required by the provisions of Title 23 section 451, sub-paragraphs (a), (b) and (c).

8. Allegation number 12 is admitted, however, it must be clarified that the plaintiff herein has never registered or requested a number at the Division of Marine Operations of the Maritime Department of the Ports Authority in the [44] manner and form provided by section 451, sub-paragraphs (a), (b) and (c) of Title 23.

9. Allegation number 16 is admitted but it must be clarified that the property in question has been appraised in the sum of $19,800.00.

Affirmative Defenses

1. The complaint fails to state a cause of action in favor of plaintiff and against co-defendants.

2. The contested statutes are constitutional since they meet the standards set forth in the due process and the "Taking" clauses of the Fifth and Fourteenth amendments of the U. S. Constitution.

3. The requirements of due process were complied with in this case as the notice of seizure was duly sent to the person registered as owner of the property at the Division of Marine Operations of the Maritime Department of the Commonwealth of Puerto Rico.

4. The contested statutes provide for a strict mechanism consonant with the need required to control the evergrowing influx and trafficking of harmful drugs in the Commonwealth of Puerto Rico.

5. Assuming that plaintiff in this case suffered damages, which we deny, these were caused by the negligence of said plaintiff and/or the negligence of Donovan Olson, lessee of the mentioned property.

San Juan, Puerto Rico, January 24, 1973.

RAFAEL SANTOS DEL VALLE
Acting Attorney General

NELLIE ORTIZ TORRES, Director
General Litigation Division

LUIS BERRIOS AMADEO
Attorney, Department of Justice

By: /s/ WILLIAM A. POWER
William A. Power
Attorney, Department of Justice

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[51] IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

Civil No. 1018-72

[Caption Omitted]

Memorandum Opinion and Order

Plaintiff instituted this suit seeking permanent injunctive relief alleging that the seizure and forfeiture of its property by the Superintendent of Police of the Common-

wealth of Puerto Rico (hereinafter referred to as the Superintendent), violated the Due Process Clause, and constituted a taking of property without just compensation, contrary to the Fifth and Fourteenth Amendments of the Constitution of the United States. As the action sought to enjoin the enforcement of a state statute on the grounds of its inconsistency with the Constitution of the United States, a three-judge court was convened.[1] Although the [52] jurisdiction of this Court is not in issue, we do nevertheless find that all prerequisites, both jurisdictional and pseudojurisdictional,[2] are present and, therefore, conclude that this case is properly before us.

1.—The Constitutional claim presented is substantial. *Monroe* v. *Pape,* 365 U.S. 167 (1961); *McNeese* v. *Board of Education for Community School District No. 187,* 373 U.S. 668 (1963); *Lynch* v. *Household Finance Corporation,* 405 U.S. 538 (1972).

2.—The challenged statutes have statewide applicability. *Board of Regents of the University of Texas System* v. *New Left Education Project,* 404 U.S. 541 (1972).

3.—The so called pseudojurisdictional defenses, such as exhaustion, abstention and comity, do not apply to this case. Exhaustion of state judicial remedies is not a prerequisite to invoking federal jurisdiction seeking constitutional protection, *Marin* v. *University of Puerto Rico,* 346 F. Supp. 470 (D.P.R. 1972). Insofar as abstention is concerned, we

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[1] At first, the defendants, represented by the Secretary of Justice of the Commonwealth of Puerto Rico, opposed plaintiff's motion to convene a three-judge court, alleging as sole defense that this was a case calling for the application of the doctrine of abstention. After oral argument on the motion, the Secretary withdrew this defense and filed a motion consenting to the convening of a three-judge court. The District Judge, having found that all jurisdictional pre-requisites had been met, then requested the three-judge court.

[2] This term is borrowed from *Hobbs* v. *Thompson,* 448 F.2d 456 (5 Cir. 1971).

specifically find that the statutes here involved, as well as their predecessors, have been consistently interpreted by the Supreme Court of the Commonwealth of Puerto Rico[3] and, consequently, under the cases of *Wisconsin* v. *Con-*
[53] *stantineau,* 400 U.S. 433 (1970); *Fornaris* v. *Ridge Tool Co.,* 400 U.S. 41 (1970); *Reetz* v. *Bozanich,* 397 U.S.. 82 (1970); *Harman* v. *Forsseneius,* 380 U.S. 528 (1964), and *Railroad Commission of Texas* v. *Pullman Co.,* 312 U.S. 496 (1941), we need not abstain. We do, nonetheless, believe that the Supreme Court of the Commonwealth of Puerto Rico would have reached the same result as we do here today, in view of the fact that it has followed federal decisions in interpreting local forfeiture statutes.

There is "no conceivable way in which the Commonwealth Courts can construe" the challenged statutes "to avoid the constitutional issues raised in this case." *Rolando Santin Arias* v. *Examining Board of Refrigeration and Air Conditioning Technicians,* —— F. Supp. —— (D.P.R. 1972), Opinion entered November 20, 1972). In rejecting abstention, we have also taken into account the ensuing delay and the prejudice and additional losses that plaintiff would have to bear. Plaintiff has been deprived, since July 11, 1972, of valuable property and of the income produced by it. Also, the nature of the property itself, a yacht, makes it specially susceptible to deterioration and other perils of the sea. But, most compelling, is the fact that under the statutory scheme, the available procedure
[54] precludes plaintiff from challenging the forfeiture in

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[3] *General Motors Acceptance Corporation* v. *Brañuela,* 61 D.P.R. 725, 61 P.R.R. 701 (1943); *Torres* v. *Buscaglia,* 68 D.P.R. 336, 68 P.R.R. 314 (1948); *Martinez* v. *Buscaglia,* 69 D.P.R. 438, 69 P.R.R. 406 (1948); *General Motors Acceptance Corporation* v. *District Court,* 70 D.P.R. 941, 70 P.R.R. 898 (1950); *Metro Taxicabs, Inc.* v. *Treasurer,* 73 D.P.R. 171, 73 P.R.R. 164 (1952); *Stuckert Motor Company, Inc.* v. *District Court,* 74 D.P.R. 527, 74 P.R.R. 494 (1953); *Melendez* v. *Superior Court,* 90 D.P.R. 656, 677-678, 90 P.R.R. 639, 659-660; *Commonwealth* v. *Superior Court,* 94 D.P.R. 717, 94 P.R.R. 687 (1967).

the state courts.[4] Finally, injunctive relief cannot be granted by the Courts of the Commonwealth of Puerto Rico because of the existence in Puerto Rico of an anti-injunction statute.[5] Having thus considered these threshold issues, we face the issue on the merits.

Our task has been greatly simplified by the cooperation of the parties in stipulating the facts relevant to the constitutional issues raised. These can be summarized as follows: Plaintiff is in the business of leasing pleasure yachts in the United States and Puerto Rico. On July 11, 1972, one of its yachts was seized by the Superintendent and forfeited to the Commonwealth of Puerto Rico. At the time of seizure, the yacht in question was in the possession of a third party pursuant to a lease agreement, which among other things specifically prohibited lessee from using the leased property for an unlawful purpose. The lessee had been discovered by police agents possessing marijuana while on board the yacht which, under Puerto Rican law is [55] prohibited.[6] Plaintiff did not know that its property was being used for an illegal purpose and was completely innocent of the lessee's criminal act. After the seizure and within the time allowed by law,[7] the Superintendent notified lessee. Plaintiff was never notified and, since lessee

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[4] Title 34, Laws of Puerto Rico Annotated, Section 1722(a) provides: "The filing of such complaint within the period herein established shall be considered a jurisdictional prerequisite for availing of the action herein authorized." During oral argument, the Government agreed that under the circumstances of this case, the plaintiff was time barred.

[5] Title 32, Laws of Puerto Rico Annotated, Section 3524; *Arraras* v. *Tribunal Superior*, —— D.P.R. ——, —— P.R.R. ——, (Decision entered January 27, 1972).

[6] Controlled Substances Act of Puerto Rico, Title 24, Laws of Puerto Rico Annotated, Sections 2101-2607. This law is similar to the Federal Act, Title 21, United States Code, Section 801, et seq.

[7] Title 34, Laws of Puerto Rico Annotated, Section 1722(a).

did not post bond,[8] the yacht was forfeited to the Commonwealth of Puerto Rico. It was not until plaintiff attempted to recover possession of the yacht after lessee had defaulted in the rental payments that plaintiff learned of its forfeiture.

Plaintiff then instituted this suit seeking permanent injunctive relief alleging that the statutes under which the defendants had seized the vessel violated the Due Process Clause and, also, that its property had been taken for public use without just compensation.[9] We agree with the plaintiff.

The statutes involved are Title 24, Laws of Puerto Rico Annotated, Section 2512, which is part of the Controlled Substances Act,[10] and Title 34, Laws of Puerto Rico An-[56] notated. Section 1722, better known as the Uniform Vehicle, Mount, Vessel and Plane Seizure Act.[11] Under Paragraph (a)(4) of the Controlled Substances Act, it is provided that forfeiture shall be had of:

> "(4) all conveyances, including aircraft, vehicles, mount or vessels, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of [a controlled substance] described in clauses (1) and (2) of this subsection."

Since marihuana is a controlled substance under the Act, it is included in clause (1) of Section 2512, Subsection (a). Thus, possession of marihuana while on board a vessel makes the vessel subject to forfeiture. Subsection (a)(4),

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[8] Title 34, Laws of Puerto Rico Annotated, Section 1722(c).

[9] The yacht was not sold at public auction in the manner provided by Title 34, Laws of Puerto Rico Annotated, Section 1722(c). Nevertheless, the Government has set it aside for official use.

[10] Note 7, supra.

[11] Title 34, Laws of Puerto Rico Annotated, Section 1721.

like its predecessor, Title 24, Laws of Puerto Rico Annotated, Section 975(f), makes no distinction between conveyances owned by the person accused of the illegal act and conveyances owned by a person who is innocent of the possessor's criminal act and is in no way whatsoever connected with it. [12]

[57] In its brief and oral argument, the Commonwealth of Puerto Rico conceded that the owner's innocence is irrelevant to forfeiture proceedings under Section 2512(a)(4), and other Commonwealth of Puerto Rico forfeiture statutes, solely as a result of their interpretation by the Supreme Court of the Commonwealth of Puerto Rico.[13] We cannot in fairness say that the result is the fault of the Supreme Court of the Commonwealth of Puerto Rico, for it, like many other courts, state and federal, was merely following the construction given to federal forfeiture statutes by the Supreme Court of the United States. See *Goldsmith Jr. Grant Co.* v. *United States*, 254 U.S. 505 (1921); *United States* v. *One Ford Coupe*, 272 U.S. 321 (1926); *Dobbin's Distillery* v. *United States*, 96 U.S. 395, 399-401 (1878); *The Palmyra*, 12 Wheat. 1, 14, 6 L. Ed. 531 (1827), which cases have since been overruled. Inasmuch

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[12] Title 24, L.P.R.A., Section 2512(a), save for some unimportant differences, is an exact copy of its federal counterpart, 21 U.S.C., Section 881(a). The federal act, however, provides that under certain circumstances, property may not be forfeited. Subparagraph (A) excepts from forfeiture property used as a common carrier unless the owner or person in charge was a consenting party or privy to a violation of this chapter. Subparagraph (B) excepts from forfeiture conveyances which are unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or of any state. Although excluded from 24 L.P.R.A., Section 2512(a)(4), these exceptions have been judicially recognized by the Supreme Court of Puerto Rico in the cases of *Metro Taxicabs, Inc.* v. *Treasurer*, 73 D.P.R. 171, 73 P.R.R. 164 (1952), and *Ochoteco* v. *Superior Court*, 88 D.P.R. 517, 88 P.R.R. 500 (1963).

[13] See cases cited in Note 3, supra.

as Puerto Rican forfeitures statutes were, in most instances, copied from their federal counterparts, as a matter of judicial construction it was logically expected that they would have been interpreted by the Supreme Court of the Commonwealth of Puerto Rico in like manner.

[58] The recent decision of *United States* v. *United States Coin and Currency*, 401 U.S. 715 (1971), ended the fiction that inanimate objects themselves can be guilty of wrongdoing and it condemned, in the words of Blackstone, the seizure of the property of the innocent "as based upon a 'superstition' inherited from the 'blind days' of feudalism."[14] Justice Harlan, writing for the majority in that case, stated:

> "We would first have to be satisfied that a forfeiture statute, with such a broad sweep, did not raise serious constitutional questions under that portion of the Fifth Amendment which commands that no person shall be 'deprived of * * * property, without due process of law; nor shall private property be taken for public use, without just compensation."[15]

Even before the advent of Coin and Currency, the Court of Appeals for the Sixth Circuit, in the case of *McKeehan* v. *United States*, 438 F. 2d 739 (1971), rejected the legal fiction that inanimate objects can be guilty of wrongdoing and went on to say that under the Fifth Amendment "the imposition of forfeiture on the appellant is penal and causes an unconstitutional deprivation of personal property "without just compensation."[15] Justice Belaval of the [59] Supreme Court of the Commonwealth of Puerto Rico

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[14] *United States* v. *United States Coin and Currency*, 401 U.S. 715, at 721-723, citing from 1 W. Blackstone, Commentaries, C. 8,300.

[15] Id. 401 U.S., at 720.

[16] Id. 438 F.2d at 745.

had so held in writing the dissenting opinion in *Commonwealth* v. *Superior Court*, 94 D.P.R. 717, 725-807, 94 P.R.R. 687, 695-773 (1967). In 1972, a California District Court, in the case of *United States* v. *One 1971 Ford Truck*, 346 F. Supp. 613, followed *Coin and Currency* in setting aside the forfeiture of a vehicle used in connection with an illegal transaction, but whose owner was innocent of the criminal act. A similar result was reached in *Suhomlin* v. *United States*, 345 F. Supp. 650, 655 (D. Maryland 1972).

It is clear that the forfeiture of plaintiff's property under Title 24, Laws of Puerto Rico Annotated, Section 2512(a)(4), and Title 34, Laws of Puerto Rico Annotated, Section 1722, is unconstitutional in that property of a totally innocent person has been taken for government use without just compensation. To this extent, we hold that the forfeiture of plaintiff's yacht is confiscatory and deprives plaintiff of property without just compensation.

Plaintiff also alleges that the procedure under which property is forfeited violates the Due Process Clause. It claims that Title 34, L.P.R.A., Section 1722, known as the Uniform Vehicle, Mount, Vessel and Plane Seizure Act,[17] does not meet the due process requirements in allowing the seizure of property without a hearing and before [60] judgment, in failing to require the giving of adequate notice, in not providing for an adequate and meaningful hearing, in providing a procedure where the illegal use is presumed and the burden of proving otherwise is on the claimant, and in establishing a procedure with limited defenses. From the record in this case, we are not disposed to rule that the Commonwealth of Puerto Rico did not have reason to believe that notice to the owner was, in fact, given. Because of the result we reach here, this issue

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[17] 34 L.P.R.A., Section 1722, is made applicable to forfeitures for violations of the Controlled Substances Act of Puerto Rico, by virtue of 24 L.P.R.A., Section 2512(b).

becomes academic. We realize that failure to provide proper notice may violate due process standards. *Menkarell* v. *Bureau of Narcotics*, 463 F.2d 88, 94 (3 Cir. 1972); *Jackel* v. *United States*, 304 F. Supp. 993, 999 (S.D.N.Y. 1969).

We do, however, agree with plaintiff that the prehearing, prejudgment provision of this statute does not meet due process requirements. Section 1722(a) provides:

> "... The proceedings shall be begun by the seizure of the property by the Secretary of Justice, the Secretary of the Treasury or the Police Superintendent, through their delegates, policemen or other peace officers."

There is no provision whereby the seizure can be contested before it is made. In this limited posture, the statute on its face is unconstitutional. Recent Supreme Court decisions have made it clear that, absent some justification reflecting an important governmental or general public interest, property or property rights may not be [61] seized without first giving the affected party adequate and meaningful hearing. *Fuentes* v. *Shevin*, 407 U.S. 67 (1972).

The decision to seize property rests solely, as in this case, with the Police Superintendent, and it is only after the seizure has taken place that the owner or person in charge thereof may file a compliant and have his day in court.

We rely not only on the *Fuentes* v. *Shevin* decision, but on a number of other Supreme Court and three-judge district court cases which have struck down state statutes permitting prehearing or prejudgment seizures and deprivations of property or property rights. *Sniadach* v. *Family Finance Corp. of Bay View*, 395 U.S. 337 (1969); *Lynch* v. *Household Finance Corp.*, 405 U.S. 538 (1972); *Bell* v. *Burson*, 402 U.S. 535 (1971); *Wisconsin* v. *Constantineau*,

400 U.S. 433, 437 (1971); *Goldberg* v. *Kelly,* 397 U.S. 254 (1970); *Schneider* v. *Margossian,* 349 F. Supp. 741 (D. Mass. 1972); *Dorsey* v. *Community Stores Corporation,* 346 F. Supp. 103 (E.D. Wisc. 1972); *MacQueen* v. *Lambert,* 348 F. Supp. 1334 (M.D. Fla. 1972); *Holt* v. *Brown,* 336 F. Supp. 2 (W. D. Ky. 1971); *Klim* v. *Jones,* 315 F. Supp. 109 (N.D. Cal. 1970). In this case, the only argument advanced in defense of the prehearing seizure is the "need" for efficient control of narcotics. However, we have not been shown in what way prehearing confiscations are going to aid or make more efficient the enforcement of criminal [62] laws. It must be pointed out that in this case the seizure of the yacht took place on July 11, 1972, while the act for which it was forfeited took place on May 6, 1972. Under such circumstances, there is no justification for not including in the statute a provision that would require a hearing prior to seizure. As stated in *Fuentes* v. *Shevin,* supra, efficiency and economy do not justify obliterating procedural due process:

> "The establishment of prompt efficacious procedures to achieve legitimate stated ends is a proper state interest worthy of cognizance in constitutional adjudication. But the Constitution recognizes higher values than speed and efficienucy. Indeed one might fairly say of the Bill of Rights in general, and the Due Process Clause in particular, that they were designed to protect the fragile value of vulnerable citizenry from the overbearing concern for efficiency and efficacy which may characterize praiseworthy government officials no less, and perhaps more, than mediocre ones." *Stanley* v. *Illinois,* 405 U.S. 645, 656 (1972).[18]

Forfeiture is not one of those "extraordinary situations" justifying postponing a hearing. *Boddie* v. *Connecticut,*

[18] 405 U.S., at page 90, 91, Footnote 22.

401 U.S. 371, 379 (1971); nor has the Commonwealth of Puerto Rico claimed it to be such. Outright seizures with-
[63] out opportunity for a prior hearing have been allowed only in a few limited cases. The Court, in *Fuentes* v. *Shevin*, said.

> "* * * Thus, the Court has allowed summary seizures of property to collect the internal revenue of the United States, to meet the needs of a national war effort, to protect against the economic disaster of a bank failure and to protect the public from misbranded drugs and contaminated foods." [19]

Finally, the Commonwealth of Puerto Rico has asked this Court that, if we find that plaintiff's constitutional rights have been violated, we declare this forfeiture null and void, but sustain the constitutional validity of the statutes. Were this Court faced with a question of a government official's action in applying the statute, we might be in a position of granting such remedy. But the officials involved herein have acted strictly in accordance with the statutes challenged as they have been construed and, therefore, we cannot escape meeting our judicial burden. The Commonwealth of Puerto Rico in this case was fully aware of the remedy requested and had the option of returning the property confiscated or its appraisal value, thereby taking the matter out of our hands.

For the foregoing reasons, it is hereby declared that Sections 2512(a)(4) of Title 24, and Section 1722(a) of
[64] Title 34 of the Laws of Puerto Rico are unconstitutional, and an injunction will issue permanently restraining defendants and their successors from enforcing the foregoing provisions insofar as they deny the owner or person in charge of property an opportunity for a hearing, due

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[19] 407, U.S. at page 91, 92, and cases cited in footnotes 24, 25, 26, 27 and 28.

to the lack of notice, before the seizure and forfeiture of its property and insofar as a penalty is imposed upon innocent parties.

At the close of its argument, plaintiff pointed out that at present the return of the seized property might not be an adequate remedy, due to the probable deterioration of the vessel. We need not provide a specific remedy, inasmuch as Section 1722(d) of Title 34 provides adequate relief. Plaintiff did stipulate that the appraisal of the property was fair and reasonable and, therefore, is entitled to be paid the amount of the appraisal, plus interest thereon at the rate of 6% per annum, computed from the date of the seizure.

IT IS SO ORDERED.

San Juan, Puerto Rico, March 28, 1973.

FRANK M. COFFIN
Frank M. Coffin, *Chief Judge*
U. S. Court of Appeals for the
First Circuit, Presiding

HIRAM R. CANCIO
Hiram R. Cancio, *Chief Judge*
U. S. District Court for the
District of Puerto Rico

JOSE V. TOLEDO
Jose V. Toledo, *United States*
District Judge for the District
of Puerto Rico

[65] IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

CIVIL No. 1018-72

[Caption omitted]

Motion for Order Substituting Successor Public Officers

TO THE HONORABLE COURT:

This is an action which was instituted by plaintiff against Luis Torres Massa, Superintendent of Police and Manuel Martinez Suarez, Chief of Transportation of the Commonwealth of Puerto Rico, in their official capacities. While the proceedings were pending in this Court and the judgment rendered, Astol Calero-Toledo succeeded to the office of Superintendent of Police and Edgar R. Balzac was named Administrator of the newly created agency General Service Administration which is the equivalent of the office of Chief of Transportation, the latter office having been merged into the General Services Administration, [66] as prescribed by law.

WHEREFORE, it is respectfully requested that pursuant to Rules of Civil Procedure, that the successors be substituted as the defendants in this action and that the Clerk be ordered to make the appropriate change.

San Juan, Puerto Rico, this 3rd day of May, 1973

FRANCIS DE JESUS-CHUCK
Attorney General for the
Commonwealth of Puerto Rico

/s/ J. F. RODRIGUEZ RIVERA
J. F. Rodriguez Rivera
Acting Solicitor General

/s/ RUTH TENTORI DE LEBRON-VELAZQUEZ
Ruth Tentori De Lebron-Velazquez
Assistant Solicitor General
Attorneys for Defendants
P. O. Box 192
San Juan, Puerto Rico 00902

[68] IN THE UNITED STATES DISTRICT COURT

CIVIL No. 1018-72

[Caption omitted]

Order

The Attorney General and the Acting Solicitor General for the Commonwealth of Puerto Rico have filed a motion notifying the Court that the defendants LUIS TORRES-MASSA and MANUEL MARTINEZ-SUAREZ, Superintendent of Police and Chief of Transportation, have been succeeded in said offices by ASTOL CELERO-TOLEDO, as Superintendent of Police and EDGAR R. BALZAC, as Administrator of the General Services Administration of the Commonwealth of Puerto Rico and requesting that they be substituted as defendants in the present action, instead of the original defendants.

It appearing that said motion is for good cause and the Court having been appraised of the facts related therein, the Clerk is ordered to make the appropriate change and effective immediately ASTOL CALERO-TOLEDO, Superintendent of Police and EDGAR R. BALZAC, Administrator of the [69] General Services Administration of the Commonwealth of Puerto Rico, shall appear as defendants in the present action in any further proceedings which may be instituted thereof.

San Juan, Puerto Rico, this 4th day of May, 1973

HIRAM R. CANCIO
United States District Judge

[70] IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

CIVIL No. 1018-72

[Caption omitted]

Notice of Appeal to the Supreme Court of the United States

TO THE HONORABLE COURT:

Notice is hereby given that the defendants above named, hereby appeal to the Supreme Court of the United States from the final order entered in this action on 29 March 1973.

This appeal is taken pursuant to 28 U.S.C. 1253.

San Juan, Puerto Rico, this 7th day of May, 1973.

/s/ FRANCISCO DE JESUS-SCHUCK
Francisco De Jesus-Schuck
Attorney General for the
Commonwealth of Puerto Rico

/s/ J. F. RODRIGUEZ-RIVERA
J. F. Rodriguez-Rivera
Acting Solicitor General

/s/ RUTH TENTORI DE LEBRON-VELASQUEZ
Ruth Tentori De Lebron-Velasquez
Assistant Solicitor General
Attorney for Defendants
P. O. Box 192
San Juan, Puerto Rico 00902

[87] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

CIVIL No. 1018-72

[Caption omitted]

Judgment

This cause came to be heard on plaintiff's motion seeking permanent injunction against defendants, and the Court having heard oral argument and considering the stipulation of facts filed by the parties, and it appearing to the Court that the defendants committed, are committing and intend to continue to commit acts in violation of plaintiff's constitutional rights; and it further appearing that unless restrained by order of this Court the plaintiff will continue to be deprived of its property without due process of law and without just compensation, now, after due deliberation having been had thereon and for the reasons set forth in the Memorandum Opinion and Order filed and entered March 29, 1973, it is

ORDERED, ADJUDGED and DECREED, that defendants Astol Calero and Edgar R. Balzac, their officers, agents, repre- [88] sentatives, employees and all persons in active concert and participation with them be, and they hereby are, permanently enjoined and restrained from in any manner depriving the plaintiff of its property without due process of law and without just compensation; and it is further

ORDERED, ADJUDGED and DECREED, that defendants Astol Calero and Edgar R. Balzac, their officers, agents, representatives, employees and all persons in active concert and participation with them be, and they hereby are permanently enjoined and restrained from enforcing the provisions of Section 2512(a)(4) of Title 24 and Section 1722 (a) of Title 34 of Laws of Puerto Rico Annotated, insofar as these deny the owner or person in charge of property an opportunity for a hearing due to the lack of notice before

the seizure and forfeiture of its property, and insofar as a penalty is imposed upon an innocent party; and it is further

ORDERED, ADJUDGED and DECREED, that Section 2512(a)(4) of Title 24, and Section 1722(a) of Title 34 of the Laws of Puerto Rico Annotated be, and they hereby are declared unconstitutional.

The present judgment is to be effective twenty (20) days after the date of its issuance in view of the reasons set out in our order of this day.

San Juan, Puerto Rico, June 15, 1973.

/s/ HIRAM R. CANCIO,
Hiram R. Cancio, Chief Judge
U.S. District Court for the
District of Puerto Rico

/s/ FRANK M. COFFIN
Frank M. Coffin, Chief Judge
U. S. Court of Appeals for the
First Circuit, Presiding

/s/ JOSE V. TOLEDO
Jose V. Toledo
U.S. District Court for the
District of Puerto Rico

No. 73-157

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

ASTOL CALERO-TOLEDO, Superintendent of Police, EDGAR R. BALZAC, Administrator of the General Services Administration of the Commonwealth of Puerto Rico,

Appellants,

v.

PEARSON YACHT LEASING CO.,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

JURISDICTIONAL STATEMENT

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In The

Supreme Court of the United States

October Term, 1973

Astol Calero-Toledo, Superintendent of Police, Edgar R. Balzac, Administrator of the General Services Administration of the Commonwealth of Puerto Rico,

Appellants,

v.

Pearson Yacht Leasing Co.,

Appellee.

On Appeal from the United States District Court for the District of Puerto Rico

JURISDICTIONAL STATEMENT

Appellants take this appeal from the judgment of the United States District Court for the District of Puerto Rico, entered on March 29, 1973, declaring unconstitutional and permanently enjoining the enforcement of certain seizure and forfeiture statutes of the Commonwealth of Puerto Rico. Appellants submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINION BELOW

The opinion of the District Court for the District of Puerto Rico is not yet reported. A copy of the memorandum opinion and order and a copy of the notice of appeal are attached hereto (Appendix A).

JURISDICTION

This suit was brought under 28 U.S.C. § 1343 to redress alleged deprivation of appellee's rights under the Fifth and Fourteenth Amendments. A three-judge court was convened pursuant to 28 U.S.C. §2281. This Court has never passed on the applicability of 28 U.S.C. § 2281 to the Commonwealth of Puerto Rico. But district courts have taken Puerto Rico to be a "state" within contemplation of §2281 ever since shortly after it became a commonwealth. *Mora* v. *Meijas,* 115 F. Supp. 610 (D.P.R. 1953); *Wackenhut Corp.* v. *Aponte,* 266 F.Supp. 401 (D.P.R. 1966). See also *Mora* v. *Meijas,* 206 F.2d 550 (1st Cir. 1953), and *Americana of Puerto Rico, Inc.* v. *R. Kaplas,* 368 F.2d 431 (3rd Cir. 1966). The judgment of the District Court was entered on March 29, 1973, and notice of appeal was filed in that court on May 8, 1973. Assuming that the three-judge court was properly called, the jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by Title 28, United States Code, Section 1253. *Pa. Public Util. Comm'n* v. *Pa. R.R. Co.,* 382 U.S. 281 (1965); *Stainback* v. *Wo Hock Ke Lok Po,* 336 U.S. 376 (1949); *Rorick* v. *Bd. of Comm'rs of Everglades Drainage Dist.,* 307 U.S. 208 (1939).

QUESTIONS PRESENTED

1. Whether appellee, nominally lessor but effectively conditional vendor of a yacht seized by and forfeited to the Commonwealth of Puerto Rico, had such a property interest in the yacht as would support a claim of deprivation

of property without due process of law and taking without just compensation.

2. Whether certain confiscation and forfeiture statutes of the Commonwealth of Puerto Rico, in authorizing seizure of property without a prior adversary hearing, deny persons with interests therein due process of law.

3. Whether these statutes must be construed as authorizing the taking without just compensation of Appellee's property, to wit, by denying owners and lienholders who have consented to the use by others of the property seized the right to challenge the forfeiture on the grounds of their own innocence in the wrong for which the property is seized and forfeited.

STATUTES INVOLVED

The pertinent parts of 24 L.P.R.A. § 2512 (a)(4) and (b) (Supp. 1972), 34 L.P.R.A. § 1722 (a)-(e), and 23 L.P.R.A. § 451, 451b, and 451c are set forth in Appendix B.

STATEMENT[1]

Appellee ("Pearson") is a New York incorporated and based division of Grumman, Inc., engaged in leasing pleasure yachts. Appellants are the current Superintendent of Police and the Administrator of the General Services Administration of the Commonwealth of Puerto Rico. On March 15, 1971, Pearson leased a yacht to Donovan and

[1] The factual record on which this appeal is based consists of a Stipulation of Facts and the lease and option-to-purchase agreements between Pearson and Lessee, all of which is printed as Appendix C.

Loretta Olson ("Lessee") for a five year term.[2] The parties simultaneously executed an option contract giving Lessee the right to purchase the yacht on thirty days notice at any time during the lease term, the price diminishing over that period at a depreciation rate equivalent to the monthly rental. At the end of the fifth year the yacht could be purchased for $1.00. App. C, *infra,* pp. 53-54. In effect, then, Pearson sold the yacht to its "lessee", retaining title until it had received full payment.

On May 6, 1972, Puerto Rican authorities discovered marihuana on the yacht. Under the Controlled Substances Act of Puerto Rico, 24 L.P.R.A. § 2102-2607 (Supp. 1972), possession of marihuana is prohibited. It was stipulated at trial that Pearson was wholly innocent of this violation of law. On July 11, 1972, the yacht was seized by the Superintendent of Police, predecessor in office of appellant Astol Calero-Toledo. 24 L.P.R.A. § 2512 (a)(4) (Supp. 1972) subjects to forfeiture to the Commonwealth of Puerto Rico vessels used to transport controlled substances. Under § 2512 (b) such property is to be seized and forfeited in the manner provided by the Uniform Vehicle, Mount, Vessel and Plane Seizure Act, 34 L.P.R.A. § 1722. App. C, *infra,* pp. 37-41.

Section 1722 requires the Superintendent to serve notice of the seizure "on the owner of the property seized or the person in charge thereof or any person having any known

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[2] The lease agreement provided that Lessee was to use the yacht only for legal purposes; that Lessee, at its expense, was to insure Pearson against loss of the yacht "sustained in any manner whatsoever"; that "*forfeiture* of said Equipment shall not discharge or diminish the obligation of Lessee to pay rent...." [emphasis supplied]; that Lessee had the exclusive right to use and possession of the yacht during the term unless and until default by Lessee, written notice of default by Pearson, expiration of a fifteen day correction period, and exercise by Pearson of its right to terminate; and finally, that the yacht was to be based at the contract date home port of Lessee, specified as a Puerto Rican address, except with the written consent of Pearson. App. C, *infra,* pp. 42-50.

right or interested [sic] therein" within ten days. The Superintendent duly notified Lessee, who was on record with the Division of Marine Operations of the Ports Authority as the owner of the vessel. 23 L.P.R.A. § 451b and 451c require the owner of the vessel who wishes to operate it within the navigable waters of Puerto Rico to file an application for an indentification number with the Authority. Neither the Superintendent nor Lessee notified Pearson, who was not on record with the Ports Authority. App. B, *infra,* pp. 33, 34, 36; App. C, *infra,* p. 39.

Lessee failed to challenge the confiscation within the fifteen day period following service of notice on him as provided by § 1722(a); under § 1722(c), the yacht then became subject to sale at auction or reservation for official use of the Government of Puerto Rico. The Chief of the Office of Transportation, predecessor in office of Edgar R. Balzac, second-named appellant, chose the latter. Pearson did not learn of the seizure until Lessee defaulted and Pearson unsuccessfully attempted, on October 19, 1972, to regain possession of the yacht. App. A, *infra,* p. 22.

On November 6, 1972, Pearson filed suit in the United States District Court for the District of Puerto Rico under 28 U.S.C. § 1343, seeking to compel the return of the yacht, to have 24 L.P.R.A. § 2512(a)(4) and (b) and 34 L.P.R.A. § 1722 declared unconstitutional, and to enjoin their enforcement. Pearson also filed a motion to have a three-judge court convened in accordance with 28 U.S.C. § 2281. On December 21, appellants withdrew their opposition (on the basis of the abstention doctrine) to the convening of the three-judge court, and submitted thereto. App. A, *infra,* p. 20.

In its memorandum opinion and order issued March 29, 1973, the three-judge court ordered Puerto Rico to pay Pearson the appraised value of the yacht, as provided under 34 L.P.R.A. § 1722(d), and issued a permanent injunction against the enforcement of the challenged statu-

tory provisions. The order was based on two holdings. First, the court declared that the challenged statutes, in authorizing seizure without a hearing, permitted a deprivation of Pearson's property without due process. The court claimed support for this proposition in *Fuentes* v. *Shevin*, 407 U.S. 67 (1972). (The court did *not* hold that Puerto Rico had failed to make reasonable efforts to notify interested parties before the *forfeiture*, specifically indicating that had this issue been reached it would have ruled with appellants. App. A, *infra*, p. 26.) Second, the court held that the statutes effected a taking of Pearson's property without just compensation in that, as the court read the Supreme Court of Puerto Rico's construction of the statutes, they do not allow the owner of seized property to nullify a forfeiture by proving his own innocence in the crime for which the property was seized. *United States* v. *United States Coin and Currency*, 401 U.S. 715, 721-722 (1971) (hereinafter, *Coin and Currency*), was said to be controlling.

THE QUESTIONS ARE SUBSTANTIAL

Summary of Appellants' Position

Forfeiture is a standard statutory prescription for property used in connection with any of a broad range of violations of criminal law. *See, e.g.*, 21 U.S.C. § 881(a), from which the Puerto Rican statute was copied; 49 U.S.C. § 782; 26 U.S.C. § 7301; 56 1/2 Ill. Stats. Ann. § 712, § 1505 (Supp. 1973); 18 Mich. Stats. Ann. § 18.1070(55) (Supp. 1973); 14A Fla. Stats. Ann. § 398.24. All of these statutes and many others must fall if the decision below is affirmed. None provides notice before seizure, which the district court held due process to require; none of the cited federal statutes by its terms protects innocent owners and lienholders against forfeiture, which the district court held is necessary to avoid taking without just compensation. If

this Court affirms the district court's decision without modification, it will make drafting an effective and constitutional forfeiture statute an impossibility: notice and an adversary hearing would enable the genuinely criminal to remove and hide any property sought to be seized.

By the same reasoning, the foundation of our understanding of the Fourth Amendment's guarantee against "unreasonable searches and seizures" would be undermined: if notice and an adversary hearing must be provided before property whose possessor has already been arrested can be seized, does it not follow that notice and an adversary hearing must be provided before the suspect himself can be arrested? Manifestly the issues involved in this case are substantial.

We respectfully submit that the decision of the court below is, equally clearly, erroneous. Pearson was not deprived of any property interest by the seizure of the yacht from Lessee because it had no possessory interest whatsoever in the vessel at that moment, only a security interest, or at most bare title. Even if Pearson had had a possessory interest, due process has never been construed by this Court to require an adversary hearing before *seizure* in a quasi-criminal proceeding such as forfeiture, and *Fuentes* v. *Shevin,* cited by the district court as supporting that construction, expressly rejects it. Due process does require an attempt to provide appropriate notice and opportunity for hearing before *forfeiture;* but the challenged statutes make adequate provisions for this, and the district court expressed satisfaction with Puerto Rico's efforts to notify parties with interests in the yacht.

The district court found that Pearson's property was taken without just compensation because it would have been

barred, under Puerto Rican law, from defending in any forfeiture hearing on the grounds of its own innocence. This conclusion is incorrect for four reasons. First, this Court's statement in *Coin and Currency, supra,* at 721-22, that forfeiture statutes "are intended to impose a penalty only upon those who are significantly involved in a criminal enterprise" has never been authoritatively interpreted to require legislative provision of such a defense as a condition to the constitutionality of forfeiture statutes; the weight of the expressions of lower courts is against such an interpretation; and policy and precedent are against such a requirement. Second, even if the district court was correct in finding that any constitutionally sound forfeiture statute must permit the defense, there is ample Puerto Rican precedent for recognizing it without invalidating the statutes. The court below should have followed these precedents to avoid declaring the statutes unconstitutional. Third, depending upon the proper interpretation of another part of the Puerto Rican statutes, Pearson either still has, or once had but lost by inaction, an opportunity to present its defenses to a Puerto Rican court. In neither case can Pearson be found to have suffered any loss from the constitutional infirmity it alleges. Fourth, it would be grossly unjust to permit Pearson to extract from Puerto Rico the appraised value of the yacht. Pearson is already entitled, under its agreement with Lessee, to the insurance proceeds and to an action against Lessee for the balance of the rent due, each of which is presumably at least equal in value to the yacht when seized, as stipulated by Pearson itself. Moreover, whatever opportunities to contest the forfeiture Pearson did have or should have had, it lost them by its own negligent failure to register its interest in the yacht with the Puerto Rican Ports Authority as required by the laws of Puerto Rico.

The Court Below Erred in Holding that Seizure without Notice Deprived Pearson of Property without Due Process of Law

Under Clauses 6 and 11 of the lease, Lessee, not Pearson, had the exclusive right to possession of the yacht at the time of seizure. App. C, *infra*, pp. 45, 47. In Puerto Rico, title to seized property does not pass until forfeiture, *Downs* v. *Porrata*, 76 P.R.R. 572 (1954). Therefore, the court below erred when it found that Pearson "has been deprived, since [the seizure of the yacht, on] July 11, 1972 of valuable property . . ." App. A, *infra*, p. 21. And it is therefore impossible for the *seizure* of the yacht to have violated Pearson's rights under the due process clause.

The district court found the statute unconstitutional on its face because it made no provision for notice and a hearing before seizure. The district court cited *Fuentes* v. *Shevin*, 407 US. 57 (1972), as prohibiting such a "deprivation", and concluded that "*forfeiture* is not one of those extraordinary situations justifying postponing a hearing" [all emphasis supplied unless otherwise indicated]. App. A, *infra*, p. 28. The issue, of course, is whether *seizure* involves considerations justifying postponing a hearing; Puerto Rico, like other American jurisdictions, does provide opportunity for a hearing before *forfeiture*. The replevin statutes which were held in *Fuentes* v. *Shevin* to deprive without due process were described by this Court as follows:

> The statutes, moreover, abdicate effective state control over state power. Private parties, serving their own private advantage, may unilaterally invoke state power to replevy goods from another. No state official participates in the decision to seek a writ; no state official reviews the basis for the claim to repossession; and no state official evaluates the need for immediate seizure. (407 U.S. at 93.)

The Court then went on to say that:

> *The seizure of possessions under a writ of replevin is entirely different from the seizure of possessions under a search warrant.* First, the search warrant is generally issued to serve a highly important governmental need—*e.g.*, the apprehension and conviction of criminals—rather than the mere private advantage of a private party in an economic transaction. Second, a search warrant is generally issued in situations demanding prompt action. The danger is all too obvious that a criminal will destroy or hide evidence or fruits of his crime if given any prior notice. Third, the Fourth Amendment guarantees that the state will not issue search warrants merely upon the conclusory application of a private party. It guarantees that the state will not abdicate control over the issuance of warrants and that no warrant will be issued without a showing of probable cause. *Thus, our decision today in no way implies that there must be opportunity for an adversary hearing before a search warrant is issued.* (*Id.* at 93-94, n. 30.)

Seizure in a forfeiture proceeding is, like seizure of evidence for a criminal proceeding, subject to the "probable cause" requirement of the Fourth Amendment, not the adversary hearing requirement of the due process clause.[3] *United States* v. *Troiano*, 365 F.2d 416 (3rd Cir. 1966), *cert. denied* 385 U.S. 958 (1966); *Burge* v. *United States*, 342 F.2d 408 (9th Cir. 1965), *cert. denied* 382 U.S. 829 (1965); *cf.* 24 L.P.R.A. § 2510 (Supp. 1972).

The due process clause does obligate the state to make efforts "reasonably calculated, under all the circumstances,

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[3] It would be especially absurd to require notice before seizure on the specific facts of this case: is the state to carry the burden of notifying all holders of security interests in a vessel transporting contraband before seizing it?

to apprise interested parties of the pendency of the action [in which their interests will be affected]," *Mullane* v. *Central Hanover Tr. Co.*, 399 U.S. 306, 314 (1950); *Robinson* v. *Hanrahan*, 409 U.S. 38 (1972). The challenged statute provides for such notice, and the court below stated that "from the record in this case, we are not disposed to rule that the Commonwealth of Puerto Rico did not have reason to believe that notice to the owner was, in fact, given." App. A, *infra*, p. 26.

Pearson's sole serious contention was that the hearing Puerto Rico provides before forfeiture is not meaningful because the defense of innocence of the crime for which the vessel is forfeited is not provided by the statutes. The three-judge court treated this contention as raising the issue of taking without just compensation,[4] discussed below.

The Court Below Erred in Holding that Pearson Suffered a Taking of Property without Just Compensation

1. The district court reasoned that if forfeiture statutes "are intended to impose a penalty only upon those who are significantly involved in a criminal enterprise," *Coin and Currency, supra*, at 721-2, it is a taking without just compensation to deny one having an interest in property seized, but lacking involvement in the crime for which the seizure was made, the right to preserve his interest against forfeiture by proof of his innocence. In support of this

[4] An approach which mystifies appellants. No property is being taken "for public use" in the eminent domain sense which is at the core of the just compensation requirement of the Fifth Amendment. The issue here is whether a state may constitutionally apply quasi-criminal sanctions to one who consents to the use of his property by another, who then uses it in the commission of a crime. Whether the legislative power to define and to punish criminal conduct extends this far would seem to raise a question of substantive due process, or perhaps of "excessive fines" under the Eighth Amendment, not of just compensation.

reasoning, the court offered one federal appellate decision and two federal district court decisions. The appellate decision, *McKeehan* v. *United States,* 438 F.2d 739 (6th Cir. 1971), and one of the district court cases, *Suhomlin* v. *United States,* 345 F.Supp. 650 (D. Md. 1972), each held that the government was not entitled to forfeiture, given that it had dropped the criminal charges upon which the initial seizure had been made. Thus neither examined the status of the property interest of an innocent party when the possessor of the property seized is in fact guilty of a criminal violation supporting forfeiture. The remaining district court decision, *United States* v. *One 1971 Ford Truck,* 346 F.Supp. 613 (C.D. Calif. 1972), does proclaim the principle sought to be supported, but only in dictum: the court held that the possessor of the truck was unlawfully in possession of it when apprehended and so, under a statutory exception, the innocent owner's interest could not be forfeited. *Id.* at 619-21. This same exception is judicially recognized in Puerto Rico. *Ochoteco* v. *Superior Court,* 88 D.P.R. 517, 88 P.R.R. 500 (1963).

This Court has rejected in a long line of cases the principle announced by the court below. *Goldsmith Jr.-Grant Co.* v. *United States,* 254 U.S. 505 (1921); *Dobbin's Distillery* v. *United States,* 96 U.S. 395 (1878); *The Palmyra,* 25 U.S. (12 Wheat.) 1 (1827). On the strength of a single district court's dicta the court below believes that *Coin and Currency* overruled these cases. At least two circuit courts of appeal disagree flatly. *United States* v. *One 1971 Buick Riviera,* 463 F.2d 1168 (5th Cir. 1972); *United States* v. *One 1967 Ford Mustang,* 457 F.2d 931 (9th Cir. 1972). The latter makes the obvious point that such a decision should be made only by this Court or by the appropriate legislature. *Id.* at 932.

The desirability of the result reached by the district court is by no means self-evident. Of course it would be unjust for an owner to lose his vehicle as a result of a crime committed by one who has stolen it, because the owner bears no causal responsibility for the crime, did not in any way consent to the risk of its occurrence, and cannot be made the medium of any deterrence of future occurrences by the imposition of a forfeiture upon him. No American jurisdiction permits forfeiture in these circumstances. But the owner who consents to the possession and use of his property by another presents a different case. He is a physical cause of the use of that property in a subsequent violation of law by the possessor. He is in a position to know of the risk, to discourage the possessor from committing the crime, and to protect himself against loss.[5] In one of the decisions which the court below thinks has been overruled, this Court said that in enacting a forfeiture statute a legislature "interposes the care and responsibility of [the owner of property which may be used to facilitate violations of law] in aid of the prohibitions of the law and its punitive provisions. . . ." *Goldsmith, Jr.-Grant Co.* v. *United States,* 254 U.S. 505, 511 (1921). It is entirely consistent to interpose the owner's responsibility when he has consented to use of the property by another and to refuse to do so when use by another was against his will. Certainly it is a matter of the "severity of punishment,' "its efficacy or its futility," matters which this Court has said to be "peculiarly questions of legislative policy." *Gore* v. *United States,* 357 U.S. 386, 393 (1958).

2. But if justice today insists on allowing the innocent third party defense against forfeiture, in the form sought by Pearson, justice can and should be done without striking

[5] Pearson is a paradigm example. *See* lease clauses 4(a), 4(c). 6. App. C, *infra,* pp. 43, 44, 45.

down the Puerto Rican statutes as unconstitutional. There are already two standard exceptions to the long-standing rule that innocence will not save a third party's interest in the seized object, one exempting property used as a common carrier unless the owner or person in charge is a consenting party to the violation, the other exempting conveyances unlawfully in the possession of one other than the owner. *See, e.g.*, 21 U.S.C. § 881(a), subparagraphs (A) and (B). In Puerto Rico these exceptions exist, as the district court remarked, *by virtue of judicial recognition.* App. A., *infra*, p. 24, n. 12: *Metro Taxi Cabs, Inc.* v. *Treasurer*, 73 D.P.R. 171, 73 P.R.R. 164 (1952), and *Ochoteco* v. *Superior Court*, 88 D.P.R. 517, 88 P.R.R. 500 (1963).

The district court emphasized that the irrelevance to proceedings under Puerto Rican forfeiture statutes of the owner's innocence is "solely as a result of their interpretation by the Supreme Court of the Commonwealth of Puerto Rico." App. A, *infra* p. 24. The court continued:

> We cannot in fairness say that the result is the fault of the Supreme Court of the Commonwealth of Puerto Rico, for it, like many other courts, state and federal, was merely following the construction given the federal forfeiture statutes by the Supreme Court of the United States [before *Coin and Currency*].

The court below was, moreover, confident "that the Supreme Court of the Commonwealth of Puerto Rico would have reached the same result as we do here today, in view of the fact that it has followed federal decisions in interpreting local forfeiture statutes." App. A *infra.* p. 21. But if the Puerto Rican Supreme Court were going to reach this result, it is doubtful that it would have done so by declaring the statutes unconstitutional. It is far more likely that the Puerto Rican Supreme Court would have recognized the innocence defense as a gloss on the statutes, just

as it did with the other two innocence exceptions.[6] *Metro Taxi Cabs, Inc.* v. *Treasurer, supra; Ochoteco* v. *Superior Court, supra.* The district court below plainly erred when it said "'[t]here is no conceivable way in which the Commonwealth courts can construe' the challenged statutes 'to avoid the constitutional issues raised in this case.'" App. A, *infra,* p. 21.

This Court has said:

> The cardinal principle of statutory construction is to save and not to destroy. * * * as between two possible interpretations of a statute, by one of which it would be unconstitutional and the other valid, our plain duty is to adopt that which saves the act. Even to avoid a serious doubt the rule is the same. (*N.L.R.B.* v. *Jones & Laughlin Steel Corp.,* 301 U.S. 130 (1936).)

In this case this principle should apply with special force, since the federal court elected not to abstain to allow the Puerto Rican Supreme Court to construe and pass first on the constitutionality of local statutes.[7] *Fornaris* v. *Ridge Tool Co.,* 400 U.S. 41 (1970); *Reetz* v. *Bozanich,* 397 U.S. 82 (1970); *Bonet* v. *Texas Co.,* 308 U.S. 463, 471 (1940).

3. The constitutionality of the alleged failure of Puerto Rican law to allow the innocent third party defense in for-

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[6] The Arizona Supreme Court so construed the Arizona vehicle forfeiture statute, even though it had no similar Arizona precedents for its interpretation. *Re One 1965 Ford Mustang,* 105 Ariz. 293, 463 P.2d 827 (1970).

[7] Faithful adherence to the principle of preservative construction is indispensable to support that narrow limitation of the doctrine of abstention which this Court, on the grounds of duplication of effort and expense, has insisted upon. *England* v. *Bd. of Medical Examiners,* 375 U.S. 411 (1964). If state (or Commonwealth) officials cannot confidently expect adherence to this principle, they are remiss in their duties when they cooperate, as appellants did, in facilitating federal consideration of the constitutionality of state statutes.

feiture proceedings is an issue that the district court should never even have reached. 34 L.P.R.A. § 1722(a) provides that an interested party has fifteen days in which to challenge a forfeiture if the courts are to have jurisdiction over his complaint. App. B, *infra*, p. 34. It is well established that this period does not run against an interested party until *he himself* has been notified. *Garcia* v. *Superior Court*, 91 P.R.R. 146 (1964). In 1964 the Supreme Court of Puerto Rico said "we have no quarrel with the theory" of a plaintiff corporation seeking to contest a forfeiture on the grounds that notice was not properly served on it more than one year after notice had been served on its president. *Commonwealth* v. *Superior Court*, 96 D.P.R. 843, 845, 96 P.R.R. 822, 824 (1969), n.1 [translation from the Spanish text by Fernando E. Agrait-Betancourt, Assistant Secretary, Office of the Attorney General of the Commonwealth of Puerto Rico].

Pearson by its own admission had actual knowledge of seizure of the yacht by October 19, 1972, more than fifteen days before it filed its suit in federal district court. If actual notice satisfies the statutory requirements, then Pearson, like the plaintiff in *Commonwealth* v. *Superior Court*, *supra*, has lost its chance to air its third party defense through its own inaction.

Presumably this is the basis of the conclusion of the court below that Pearson is time-barred from the Puerto Rican courts. App. A. *infra*, pp. 21-22. If, however, only notice according to the statutory formula will suffice, as *Garcia* v. *Superior Court*, *supra*, would indicate, then Pearson has not yet been notified and hence has not yet been barred from the courts of Puerto Rico. On either interpretation, Pearson has suffered no damage as a result of the alleged failure of the Puerto Rican statute to satisfy the asserted just compensation standard. As Justice Brandeis said in

his benchmark concurring opinion in *Ashwander* v. *T.V.A.*, 297 U.S. 288, 347-8 (1935):

> The Court will not pass upon the validity of a statute upon complaint of one who fails to show that he is injured by its operation.

4. According to the district court, Pearson "is entitled to be paid the amount of the appraisal, plus interest." App. A., *infra*, p. 30. The district court cannot be basing its determination of what it would take to *justly* compensate Pearson. Clause 4(a) of the lease required Lessee to furnish Lessor with insurance policies with loss payable to Lessor "insuring Lessor against damage, loss, or destruction of the Equipment under this lease sustained in any manner whatsoever in an amount not less than the replacement value of said Equipment." App. C., *infra*, p. 43. The record contains no pleading, much less any evidence, and there is no reason to assume, that this insurance does not exist or did not fully compensate Pearson.

In addition, clause 4(c) provides that "the damage, destruction, loss, disability or *forfeiture* of said Equipment shall not discharge or diminish the obligation of Lessee to pay rent as provided in this agreement." App. C, *infra*, p. 44. The agreement provided rental payments of $474.66 per month, which over the full lease term comes to considerably more than the "unit price" specified by Pearson. App. C, *infra*, p. 52. This sum became due no later than October 19, 1972, under clause 7, App. C, *infra*, p. 45, thus "entitling" Pearson to an action in debt for that amount. This cause of action is the compensation properly envisaged by the lease in the event of forfeiture, and Pearson should be held to it.

Finally, if Pearson is now badly placed to seek from Puerto Rico courts the relief it believes itself guaranteed

by the federal Constitution, this is doubly due to its own negligence. Pearson knew — insisted on knowing — that the yacht would be based in Puerto Rico, clauses 9, 12, App. C, *infra* pp. 47-48, but failed to register with Puerto Rico authorities the ownership interest which it claims, contrary to 23 L.P.R.A. § 451b, 451c. A mortgagee who fails to record his interest loses it to a good faith purchaser; Pearson deserves no greater protection when it fails to comply with a state's police measures. Pearson knew by October 19, 1972 that the yacht had been seized, but failed to act within the time provided by Puerto Rican law. This case should present no occasion to reward inattention to local law.

CONCLUSION

For the foregoing reasons, probable jurisdiction should be noted.

Respectfully submitted,

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July 21, 1973

(Appendices Follow)

APPENDIX A

In The

United States District Court

For The District of Puerto Rico

Civil No. 1018-72

Pearson Yacht Leasing Company, Division of Grumman Allied Industries, Inc.

Plaintiff,

v.

Luis Torres Massa, as Superintendent of Police of the Commonwealth of Puerto Rico, and Manuel Martinez Suarez, as Chief of the Office of Transportation of the Commonwealth of Puerto Rico,

Defendant.

MEMORANDUM OPINION AND ORDER

Plaintiff instituted this suit seeking permanent injunctive relief alleging that the seizure and forfeiture of its property by the Superintendent of Police of the Commonwealth of Puerto Rico (hereinafter referred to as the Superintendent), violated the Due Process Clause, and constituted a taking of property without just compensation, contrary to the Fifth and Fourteenth Amendments of the Constitution of the United States. As the action sought to enjoin the enforcement of a state statute on the grounds of its inconsistency with the Constitution of the United

States, a three-judge court was convened.[1] Although the jurisdiction of this Court is not in issue, we do nevertheless find that all prerequisites, both jurisdictional and pseudojurisdictional,[2] are present and, therefore, conclude that this case is properly before us.

1. The constitutional claim presented is substantial. *Monroe* v. *Pape*, 365 U.S. 167 (1961); *McNeese* v. *Board of Education for Community School District No. 187*, 373 U.S. 668 (1963); *Lynch* v. *Household Finance Corporation*, 405 U.S. 538 (1972).

2. The challenged statutes have statewide applicability. *Board of Regents of the University of Texas System* v. *New Left Education Project*, 404 U.S. 541 (1972).

3. The so-called pseudojurisdictional defenses, such as exhaustion, abstention and comity, do not apply to this case. Exhaustion of state judicial remedies is not a prerequisite to invoking federal jurisdiction seeking constitutional protection, *Marin* v. *University of Puerto Rico*, 346 F. Supp. 470 (D.P.R. 1972). Insofar as abstention is concerned, we specifically find that the statutes here involved, as well as their predecessors, have been consistently interpreted by

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[1] At first, the defendants, represented by the Secretary of Justice of the Commonwealth of Puerto Rico, opposed plaintiff's motion to convene a three-judge court, alleging as sole defense that this was a case calling for the application of the doctrine of abstention. After oral argument on the motion, the Secretary withdrew this defense and filed a motion consenting to the convening of a three-judge court. The District Judge, having found that all jurisdictional pre-requisites had been met, then requested the three-judge court.

[2] This term is borrowed from *Hobbs* v. *Thompson*, 448 F. 2d 456 (5 Cir. 1971).

the Supreme Court of the Commonwealth of Puerto Rico[3] and, consequently, under the cases of *Wisconsin* v. *Constantineau,* 400 U.S. 433 (1970); *Fornaris* v. *Ridge Tool Co.,* 400 U.S. 41 (1970); *Reetz* v. *Bozanich,* 397 U.S. 82 (1970); *Harman* v. *Forsseneius,* 380 U.S. 528 (1964), and *Railroad Commission of Texas* v. *Pullman Co.,* 312 U.S. 496 (1941), we need not abstain. We do, nonetheless, believe that the Supreme Court of the Commonwealth of Puerto Rico would have reached the same result as we do here today, in view of the fact that it has followed federal decisions in interpreting local forfeiture statutes.

There is "no conceivable way in which the Commonwealth Courts can construe" the challenged statutes "to avoid the constitutional issues raised in this case." *Rolando Santin Arias* v. *Examining Board of Refrigeration and Air Conditioning Technicians,* ..... F. Supp. ..... (D.P.R. 1972), Opinion entered November 20, 1972). In rejecting abstention, we have also taken into account the ensuing delay and the prejudice and additional losses that plaintiff would have to bear. Plaintiff has been deprived, since July 11, 1972, of valuable property and of the income produced by it. Also, the nature of the property itself, a yacht, makes it specially susceptible to deterioration and other perils of the sea. But, most compelling, is the fact that under the statutory scheme, the available procedure precludes plain-

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[3] *General Motors Acceptance Corporation* v. *Brañuela,* 61 D.P.R. 725, 61 P.R.R. 701 (1943); *Torres* v. *Buscaglia,* 68 D.P.R. 336, 68 P.R.R. 314 (1948); *Martinez* v. *Buscaglia,* 69 D.P.R. 438, 69 P.R.R. 406 (1948); *General Motors Acceptance Corporation* v. *District Court,* 70 D.P.R. 941, 70 P.R.R. 898 (1950); *Metro Taxicabs* v. *Treasurer,* 73 D.P.R. 171, 73 P.R.R. 164 (1952); *Stuckert Motor Company, Inc.* v. *District Court,* 74 D.P.R. 527, 74 P.R.R. 494 (1953); *Melendez* v. *Superior Court,* 90 D.P.R. 656, 677-678, 90 P.R.R. 639, 659-660; *Commonwealth* v. *Superior Court,* 94 D.P.R. 717, 94 P.R.R. 687 (1967).

tiff from challenging the forfeiture in the state courts.[4] Finally, injunctive relief cannot be granted by the Courts of the Commonwealth of Puerto Rico because of the existence in Puerto Rico of an anti-injunction statute.[5] Having thus considered these threshold issues, we face the issue on the merits.

Our task has been greatly simplified by the cooperation of the parties in stipulating the facts relevant to the constitutional issues raised. These can be summarized as follows: Plaintiff is in the business of leasing pleasure yachts in the United States and Puerto Rico. On July 11, 1972, one of its yachts was seized by the Superintendent and forfeited to the Commonwealth of Puerto Rico. At the time of seizure, the yacht in question was in the possession of a third party pursuant to a lease agreement, which among other things specifically prohibited lessee from using the leased property for an unlawful purpose. The lessee had been discovered by police agents possessing marihuana while on board the yacht which, under Puerto Rican law is prohibited.[6] Plaintiff did not know that its property was being used for an illegal purpose and was completely innocent of the lessee's criminal act. After the seizure and within the time allowed by law,[7] the Superintendent notified lessee. Plaintiff was never notified and,

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[4] Title 34, Laws of Puerto Rico Annotated, Section 1722(a) provides: "The filing of such complaint within the period herein established shall be considered a jurisdictional prerequisite for availing of the action herein authorized." During oral argument, the Government agreed that under the circumstances of this case, the plaintiff was time barred.

[5] Title 32, Laws of Puerto Rico Annotated, Section 3524; *Arraras* v. *Tribunal Superior*, ... D.P.R. ....., ... P.R.R. ....., (Decision entered January 27, 1972).

[6] Controlled Substances Act of Puerto Rico, Title 24, Laws of Puerto Rico Annotated, Sections 2101-2607. This law is similar to the Federal Act, Title 21, United States Code, Section 801, et seq.

[7] Title 34, Laws of Puerto Rico Annotated, Section 1722(a).

since lessee did not post bond,[8] the yacht was forfeited to the Commonwealth of Puerto Rico. It was not until plaintiff attempted to recover possession of the yacht after lessee had defaulted in the rental payments that plaintiff learned of its forfeiture.

Plaintiff then instituted this suit seeking permanent injunctive relief alleging that the statutes under which the defendants had seized the vessel violated the Due Process Clause and, also, that its property had been taken for public use without just compensation.[9] We agree with the plaintiff.

The statutes involved are Title 24, Laws of Puerto Rico Annotated, Section 2512, which is part of the Controlled Substances Act,[10] and Title 34, Laws of Puerto Rico Annotated. Section 1722, better known as the Uniform Vehicle, Mount, Vessel and Plane Seizure Act.[11] Under Paragraph (a)(4) of the Controlled Substances Act, it is provided that forfeiture shall be had of:

> "(4) all conveyances, including aircraft vehicles, mount or vessels, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of [a controlled substance] described in clauses (1) and (2) of this subsection."

Since marihuana is a controlled substance under the Act, it is included in clause (1) of Section 2512, Subsection (a). Thus, possession of marihuana while on board a vessel makes the vessel subject to forfeiture. Subsection (a)(4), like its predecessor. Title 24, Laws of Puerto Rico Annotated, Section 975(f), makes no distinction between con-

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[8] Title 34, Laws of Puerto Rico Annotated, Section 1722(c).

[9] The yacht was not sold at public auction in the manner provided by Title 34, Laws of Puerto Rico Annotated, Section 1722(c). Nevertheless, the Government has set it aside for official use.

[10] Note 7, supra.

[11] Title 34, Laws of Puerto Rico Annotated, Section 1721.

veyances owned by the person accused of the illegal act and conveyances owned by a person who is innocent of the possessor's criminal act and is in no way whatsoever connected with it.[12]

In its brief and oral argument, the Commonwealth of Puerto Rico conceded that the owner's innocence is irrelevant to forfeiture proceedings under Section 2512(a) (4), and other Commonwealth of Puerto Rico forfeiture statutes, solely as a result of their interpretation by the Supreme Court of the Commonwealth of Puerto Rico.[13] We cannot in fairness say that the result is the fault of the Supreme Court of the Commonwealth of Puerto Rico, for it, like many other courts, state and federal, was merely following the construction given to federal forfeiture statutes by the Supreme Court of the United States. See *Goldsmith Jr.-Grant Co.* v. *United States,* 254 U.S. 505 (1921); *United States* v. *One Ford Coupe,* 272 U.S. 321 (1926); *Dobbin's Distillery* v. *United States,* 96 U.S. 395, 399-401 (1878); *The Palmyra,* 12 Wheat. 1, 14, 6 L. Ed. 531 (1827), which cases have since been overruled. Inasmuch as Puerto Rican forfeitures statutes were, in most instances, copied from their federal counterparts, as a matter of judicial construction it was logically expected that they would have been interpreted by the Supreme Court of the Commonwealth of Puerto Rico in like manner.

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[12] Title 24, L.P.R.A., Section 2512(a), save for some unimportant differences, is an exact copy of its federal counterpart, 21 U.S.C., Section 881(a). The federal act, however, provides that under certain circumstances, property may not be forfeited. Subparagraph (A) excepts from forfeiture property used as a common carrier unless the owner or person in charge was a consenting party or privy to a violation of this chapter. Subparagraph (B) excepts from forfeiture conveyances which are unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or of any state. Although excluded from 24 L.P.R.A., Section 2512(a)(4), these exceptions have been judicially recognized by the Supreme Court of Puerto Rico in the cases of *Metro Taxicabs Inc.* v. *Treasurer,* 73 D.P.R. 171,73 P.R.R. 164 (1952), and *Ochoteco* v. *Superior Court,* 88 D.P.R. 517, 88 P.R.R. 500 (1963).

[13] See cases cited in Note 3, supra.

The recent decision of *United States* v. *United States Coin and Currency*, 401 U.S. 715 (1971), ended the fiction that inanimate objects themselves can be guilty of wrongdoing and it condemned, in the words of Blackstone, the seizure of the property of the innocent "as based upon a 'superstition' inherited from the 'blind days' of feudalism."[14] Justice Harlan, writing for the majority in that case, stated:

> "We would first have to be satisfied that a forfeiture statute, with such a broad sweep, did not raise serious constitutional questions under that portion of the Fifth Amendment which commands that no person shall be 'deprived of * * * property, without due process of law; nor shall private property be taken for public use, without just compensation."[15]

Even before the advent of Coin and Currency, the Court of Appeals for the Sixth Circuit, in the case of *McKeehan* v. *United States*, 438 F. 2d 739 (1971), rejected the legal fiction that inanimate objects can be guilty of wrongdoing and went on to say that under the Fifth Amendment "the imposition of forfeiture on the appellant is penal and causes an unconstitutional deprivation of personal property "without just compensation."[16] Justice Belaval of the Supreme Court of the Commonwealth of Puerto Rico had so held in writing the dissenting opinion in *Commonwealth* v. *Superior Court*, 94 D.P.R. 717, 725-807, 94 P.R.R. 687, 695-773 (1967). In 1972, a California District Court, in the case of *United States* v. *One 1971 Ford Truck*, 346 F. Supp. 613, followed *Coin and Currency* in setting aside the forfeiture of a vehicle used in connection with an illegal transaction, but whose owner was innocent of the criminal act.

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[14] *United States* v. *United States Coin and Currency*, 401 U.S. 715, at 721-723, citing from 1 W. Blackstone, Commentaries, C. 8,300.
[15] Id. 401 U.S., at 720.
[16] Id. 438 F. 2d at 745.

A similar result was reached in *Suhomlin* v. *United States,* 345 F. Supp. 650, 655 (D. Maryland 1972).

It is clear that the forfeiture of plaintiff's property under Title 24, Laws of Puerto Rico Annotated, Section 2512(a)(4), and Title 34, Laws of Puerto Rico Annotated, Section 1722, is unconstitutional in that property of a totally innocent person has been taken for government use without just compensation. To this extent, we hold that the forfeiture of plaintiff's yacht is confiscatory and deprives plaintiff of property without just compensation.

Plaintiff also alleges that the procedure under which property is forfeited violates the Due Process Clause. It claims that Title 34, L.P.R.A., Section 1722, known as the Uniform Vehicle, Mount, Vessel and Plane Seizure Act,[17] does not meet the due process requirements in allowing the seizure of property without a hearing and before judgment, in failing to require the giving of adequate notice, in not providing for an adequate and meaningful hearing, in providing a procedure where the illegal use is presumed and the burden of providing otherwise is on the claimant, and in establishing a procedure with limited defenses. From the record in this case, we are not disposed to rule that the Commonwealth of Puerto Rico did not have reason to believe the notice to the owner was, in fact, given. Because of the result we reach here, this issue becomes academic. We realize that failure to provide proper notice may violate due process standards. *Menkarell* v. *Bureau of Narcotics,* 463 F. 2d 88, 94 (3 Cir. 1972); *Jackel* v. *United States,* 304 F. Supp. 993, 999 (S.D.N.Y. 1969).

We do, however, agree with plaintiff that the prehearing,

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[17] 34 L.P.R.A., Section 1722, is made applicable to forfeiture for violations of the Controlled Substances Act of Puerto Rico, by virtue of 24 L.P.R.A., Section 2512(b).

prejudgment provision of this statute does not meet due process requirements. Section 1722(a) provides:

> ". . . The proceedings shall be begun by the seizure of the property by the Secretary of Justice, the Secretary of the Treasury or the Police Superintendent, through their delegates, policemen or other peace officers."

There is no provision whereby the seizure can be contested before it is made. In this limited posture, the statute on its face is unconstitutional. Recent Supreme Court decisions have made it clear that, absent some justification reflecting an important governmental or general public interest, property or property rights may not be seized without first giving the affected party adequate and meaningful hearing. *Fuentes* v. *Shevin*, 407 U.S. 67 (1972).

The decision to seize property rests solely, as in this case, with the Police Superintendent, and it is only after the seizure has taken place that the owner or person in charge thereof may file a complaint and have his day in court.

We rely not only on the *Fuentes* v. *Shevin* decision, but on a number of other Supreme Court and three-judge district court cases which have struck down state statutes permitting prehearing or prejudgment seizures and deprivations of property or property rights. *Sniadach* v. *Family Finance Corp. of Bay View*, 395 U.S. 337 (1969); *Lynch* v. *Household Finance Corp.*, 405 U.S. 538 (1972); *Bell* v. *Burson*, 402 U.S. 535 (1971); *Wisconsin* v. *Constantineau*, 400 U.S. 433, 437 (1971); *Goldberg* v. *Kelly*, 397 U.S. 254 (1970); *Schneider* v. *Margossian*, 349 F. Supp. 741 (D. Mass. 1972); *Dorsey* v. *Community Stores Corporation*, 346 F. Supp. 103 (E.D. Wisc. 1972); *MacQueen* v. *Lambert*, 348 F. Supp. 1334 (M.D. Fla. 1972); *Holt* v. *Brown*, 336 F. Supp. 2 (W. D. Ky. 1971); *Klim* v. *Jones*, 315 F. Supp. 109 (N.D. Cal. 1970). In this case, the only argument advanced in

defense of the prehearing seizure is the "need" for efficient control of narcotics. However, we have not been shown in what way prehearing confiscations are going to aid or make more efficient the enforcement of criminal laws. It must be pointed out that in this case the seizure of the yacht took place on July 11, 1972, while the act for which it was forfeited took place on May 6, 1972. Under such circumstances, there is no justification for not including in the statute a provision that would require a hearing prior to seizure. As stated in *Fuentes* v. *Shevin*, supra, efficiency and economy do not justify obliterating procedural due process:

> "The establishment of prompt efficacious procedures to achieve legitimate stated ends is a proper state interest worthy of cognizance in constitutional adjudication. But the Constitution recognizes higher values than speed and efficiency. Indeed one might fairly say of the Bill of Rights in general, and the Due Process Clause in particular, that they were designed to protect the fragile values of vulnerable citizenry from the overbearing concern for efficiency and efficacy which may characterize praiseworthy government officials no less, and perhaps more, than mediocre ones." *Stanley* v. *Illinois*, 405 U.S. 645,656 (1972).[18]

Forfeiture is not one of those "extraordinary situations" justifying postponing a hearing. *Boddie* v. *Connecticut*, 401 U.S. 371,379 (1971); nor has the Commonwealth of Puerto Rico claimed it to be such. Outright seizures without opportunity for a prior hearing have been allowed only in a few limited cases. The Court, in *Fuentes* v. *Shevin*, said.

> "* * * Thus, the Court has allowed summary seizures of property to collect the internal revenue of the United States, to meet the needs of a national war effort, to protect against the economie disaster of a bank failure and to protect the public from misbranded drugs and contaminated foods."[19]

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[18] 405 U.S., at page 90,91, Footnote 22.

[19] 407 U.S. at page 91,92, and cases cited in footnotes 24, 25, 26, 27 and 28.

Finally, the Commonwealth of Puerto Rico has asked this Court that, if we find the plantiff's constitutional rights have been violated, we declare this forfeiture null and void, but sustain the constitutional validity of the statutes. Were this Court faced with a question of a government official's action in applying the statute, we might be in a position of granting such remedy. But the officials involved herein have acted strictly in accordance with the statutes challenged as they have been construed and, therefore, we cannot escape meeting our judicial burden. The Commonwealth of Puerto Rico in this case was fully aware of the remedy requested and had the option of returning the property confiscated or its appraisal value, thereby taking the matter out of our hands.

For the foregoing reasons, it is hereby declared that Section 2512(a)(4) of Title 24, and Section 1722(a) of Title 34 of the Laws of Puerto Rico are unconstitutional, and an injunction will issue permanently restraining defendants and their successors from enforcing the foregoing provisions insofar as they deny the owner or person in charge of property an opportunity for a hearing, due to the lack of notice, before the seizure and forfeiture of its property and, insofar as a penalty is imposed upon innocent parties.

At the close of its argument, plaintiff pointed out that at present the return of the seized property might not be an adequate remedy, due to the probable deterioration of the vessel. We need not provide a specific remedy, inasmuch as Section 1722(d) of Title 34 provides adequate relief. Plaintiff did stipulate that the appraisal of the property was fair and reasonable and, therefore, is entitled to be paid the amount of the apraisal, plus interest thereon at the rate of 6% per annum, computed from the date of the seizure.

IT IS SO ORDERED.

San Juan, Puerto Rico, March 28, 1973.

s/ FRANK M. COFFIN
FRANK M. COFFIN, Chief Judge
U. S. Court of Appeals for the
First Circuit, Presiding

s/ HIRAM R. CANCIO,
HIRAM R. CANCIO, Chief Judge
U. S. District Court for the
District of Puerto Rico

s/ JOSE V. TOLEDO
JOSE V. TOLEDO, United States
District Judge for the District
of Puerto Rico

IN THE

United States District Court

FOR THE DISTRICT OF PUERTO RICO

CIVIL No. 1018-72

PEARSON YACHT LEASING COMPANY, Division of Grumman Allied Industries, Inc.

Plaintiff,

v.

ASTOL CALERO-TOLEDO, as Superintendent of Police of the Commonwealth of Puerto Rico, and EDGAR R. BALZAC, as Administrator of the General Services Administration of the Commonwealth of Puerto Rico

Defendants.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

TO THE HONORABLE COURT:

Notice is hereby given that the defendants above named, hereby appeal to the Supreme Court of the United States from the final order entered in this action on 29 March 1973.

This appeal is taken pursuant to 28 U.S.C. 1253.
San Juan, Puerto Rico, this 7th day of May, 1973.

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APPENDIX B

STATUTES INVOLVED

Section 512 of the Controlled Substances Act of Puerto Rico, 24 L.P.R.A. § 2512 (Supp. 1972) provides in pertinent part:

> (a) The following shall be subject to forfeiture to the Commonwealth of Puerto Rico:
>
> (4) All conveyances, including aircraft, vehicles, mount or vessels, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of property described in clauses (1) and (2) of this subsection;
>
> (b) Any property subject to forfeiture under clause (4) of subsection (a) of this section shall be seized by process issued pursuant to Act No. 39, of June 4, 1960, as amended, know as the Uniform Vehicle, Mount Vessel and Plane Seizure Act sections 1721 and 1722 of Title 34.

Section 2 of the Uniform Vehicle, Mount, Vessel and Plane Seizure Act, 34 L.P.R.A. § 1722, provides in pertinent part:

> Whenever any vehicle, mount, or other vessel or plane is seized pursuant to the provisions of Act No. 6 of June 30, 1936, Act No. 220 of May 15, 1948, Act No. 17 of January 19, 1951, Act No. 48 of June 18, 1959 and/or Act No. 2 of January 20, 1956, such seizure shall be conducted as follows:
>
> (a) The proceedings shall be begun by the seizure of the property by the Secretary of Justice, the Secretary of the Treasury or the Police Superintendent, through their delegates, policemen or other peace officers. The officer under whose authority the action is taken shall serve notice on the owner of the property seized or the person in charge thereof or any person

having any known right or interested therein, of the seizure and of the properties so seized, said notice to be served in an authentic manner, within ten (10) days following such seizure and such notice shall be understood to have been served upon the mailing thereof with return receipt requested. The owners, persons in charge, and other persons having a known interest in the property so seized may challenge the confiscation within the fifteen (15) days following the service of the notice on them, through a complaint against the officer under whose authority the confiscation has been made, on whom notice shall be served, and which complaint shall be filed in the Part of the Superior Court corresponding to the place where the seizure was made and shall be heard without subjection to docket. All questions that may arise shall be decided and all other proceedings shall be conducted as in an ordinary civil action. Against the judgment entered no remedy shall lie other than a certiorari before the Supreme Court, limited to issues of law. The filing of such complaint within the period herein established shall be considered a jurisdictional prerequisite for the availing of the action herein authorized.

(b) Every vehicle, mount, or any vessel or plane so seized shall be appraised as soon as taken possession of by the officer under whose authority the seizure took place, or by his delegate, with the exception of motor vehicles, which shall be placed under the custody of the Office of Transportation of the Commonwealth of Puerto Rico, which shall appraise same immediately upon receipt thereof.

In the event of a judicial challenge of the seizure, the court shall, upon request of the plaintiff and after hearing the parties, determine the reasonableness of the appraisal as an incident of the challenge.

Within ten (10) days after the filing of the challenge, the plaintiff shall have the right to give bond in favor of the Commonwealth of Puerto Rico before the pertinent court's clerk to the satisfaction of the court, for the amount of the assessed value of the seized property,

which bond may be in legal tender, by certified check, hypothecary debentures, or by insurance companies. Upon the acceptance of the bond, the court shall direct that the property be returned to the owner thereof. In such case, the provisions of the following paragraphs (c), (d) and (e) shall not apply.

When bond is accepted the subsequent substitution of the seized property in lieu of the bond shall not be permitted, said bond to answer for the seizure if the lawfulness of the latter is upheld, and the court shall provide in the resolution issued to that effect, for the summary forfeiture execution of said bond by the clerk of the court and for the covering of such bond into the general funds of the Government of Puerto Rico in case it may be in legal tender or by certified check; the hypothecary debentures or debentures of insurance companies shall be transmitted by the pertinent clerk of the court to the Secretary of Justice for execution.

(c) After fifteen (15) days have elapsed since service of notice of the seizure without the person or persons with interest in the property seized have filed the corresponding challenge, or after twenty-five (25) days have elapsed since service of notice of the seizure without the court's having directed that the seized property be returned on account of the bond to that effect having been given, the officer under whose authority the seizure took place, the delegate thereof, or the Office of Transportation, as the case may be, may provide for the sale at auction of the seized property, or may set the same aside for official use of the Government of Puerto Rico. In case the seized property cannot be sold at auction or set aside for official use of the Government, the property may be destroyed by the officer in charge, setting forth in a minute which he shall draw up for the purpose, the description of the property, the reasons for its destruction and the date and place where it is destroyed, and he shall serve notice with a copy thereof on the Secretary of Justice.

(d) In case the vehicle, mount, or vessel or plane

is sold at auction, the proceeds from the sale shall be covered into the general fund of the Government of Puerto Rico, after deducting and reimbursing expenses incurred.

(e) If the seizure is judicially challenged and the court declares same illegal, the Secretary of the Treasury of Puerto Rico shall, upon presentation of a certified copy of the final decision or judgment of the court, pay to the challenger the amount of the appraisal or the proceeds from the public auction sale of such property, whichever sum is the highest, plus interest thereon at the rate of 6% per annum, counting from the date of the seizure.

Sections 1, 3, and 4 of the Act of June 14, 1965, 23 L.P.R.A. §451, 451b, 451c, provide in pertinent part:

§451. As used in this chapter, unless the context clearly implies a different meaning:

(e) "Owner" means a person other than a lien holder, having the property in or title to a motorboat. The term includes a person entitled to the use or possession of a motorboat subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation.

§451b. Every motorboat on the waters of the Commonwealth shall be numbered. No person shall operate or give permission for the operation of any motorboat on such waters unless the motorboat is numbered in accordance with this chapter, or in accordance with applicable federal law, or in accordance with a federally approved numbering system of another state, and unless (1) the certificate of number awarded to such motorboat is in full force and effect, and (2) the identifying number set forth in the certificate of number is displayed on each side of the bow of such motor boat.

§451c. (a) The owner of each motorboat requiring numbering by this Commonwealth shall file an application for number with the Authority.

APPENDIX C

IN THE

United States District Court

FOR THE DISTRICT OF PUERTO RICO

CIVIL No. 1018-72

PEARSON YACHT LEASING COMPANY, Division of Grumman Allied Industries, Inc.

Plaintiff,

v.

LUIS TORRES MASSA, as Superintendent of Police of the Commonwealth of Puerto Rico, and MANUAL MARTINEZ SUAREZ, as Chief of the Office of Transportation of the Commonwealth of Puerto Rico,

Defendant.

STIPULATIONS

TO: THE HONORABLE COURT:

COME NOW the parties through their undersigned attorneys and for the purpose of simplifying factual questions and to avoid the necessity of an evidentiary hearing, do hereby enter into the following stipulations:

1. Plaintiff is a New York corporation engaged in the chartering and/or leasing of vessels in the United States of America, including the chartering and leasing of vessels for use in the navigable waters of the Commonwealth of Puerto Rico.

2. The defendant, Luis Torres Massa, is the Superintendent of the Police of the Commonwealth of Puerto Rico and

as such is directly in charge of enforcing the criminal laws of the Commonwealth of Puerto Rico, including the provisions of Title 24, §§ 2101, The Controlled Substances Act of Puerto Rico, June 23, 1971 (24 L.P.R.A. §§ 2101-2607).

3. The defendant, Manuel Martínez Suárez, is the Chief of the Office of Transportation of the Commonwealth of Puerto Rico.

4. That pursuant to §2512(a), (4) and (b), the defendant, Luis Torres Massa, was empowered to confiscate and subject to forfeiture to the Commonwealth of Puerto Rico "all conveyances, including aircraft, vehicles, and mount or vessels which are used or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of all controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of the Act".

5. Defendant, Luis Torres Massa, is further empowered to seize any property subject to forfeiture under the provisions of 24 L.P.R.A. § 2512(a)(4) by process issued pursuant to Act of June 4, 1960, as amended, know as the Uniform Vehicle, Mount, Vessel and Plane Seizure Act, §§ 1721 and 1722 of Title 34.

6. Pursuant to the powers conferred by 24 L.P.R.A. § 2512(a)(4) and (b), defendant, Luis Torres Massa, through his delegates, policemen and/or other agents, on July 11th, 1972 seized the following property:

1 — Pearson 300, Hull No. 127 with the following equipment:

Bow Rail; Lifelines; 2 Boarding Gates; Stern Rail; Genoa Gear; Sea Hood; H&C Water Pressure System; Shower; Edson Wheel w/compass; Edson Brake; interior Handrails; Ex. Water Tank; 2 additional Opening Ports; Two-Tone Deck; Electric Bilge Pump; Fab-

rio Cushions; Carpets; Curtains; Diesel Engine; Winches; Stove; Roller Furling; Roller Reefing; Salt Water Pump; Cockpit Cushions; Tachometer and 2 Dorado Ventilators; and Mainsail; Jib and Sail Cover.

7. At the time of the seizure of the aforesaid property by the defendant, Luis Torres Massa, the same was in the possession of Donovan Olson and Loretta Olson pursuant to a bareboat charter with plaintiff, copy of which is annexed hereto as "Exhibit A".

8. Pursuant to the provisions of the Uniform Vehicle, Mount, Vessel and Plane Seizure Act, 34 L.P.R.A. §1722(a), the defendant, Luis Torres Massa, through his officers, agents and/or employees served notice of the seizure upon the lessee of the aforesaid property by mailing to him copy thereof at his known address. The notice of seizure was sent to Donovan Olson, who registered with the Ports Authority of the Commonwealth of Puerto Rico and was given a number to operate the vessel in question, as required by the provisions of Title 23 §§ 451, sub-paragraphs (a), (b) and (c).

9. That at the time of the seizure and at the time of service of notice of seizure, the lawful owner of the seized property was Pearson Yacht Leasing Company, a Division of Grumman Allied Industries Inc.

10. That the plaintiff herein has never been notified of the seizure. The plaintiff has never registered or requested a number at the Division of Marine Operations of the Maritime Department of the Ports Authority in the manner and form provided by §451, sub-paragraphs (a) (b) and (c) of Title 23.

11. The property seized is being detained, upon information and belief, at a Police Marine, in Boqueron, Puerto Rico, under the physical custody and control of agents,

policemen and/or employees of defendant Luis Torres Massa.

12. Pursuant to the provisions of 34 L.P.R.A. §1722(b) the property seized by defendant Luis Torres Massa, has been placed under the legal custody of defendant Manuel Martínez Suárez, who is the Chief of the Office of Transportation of the Commonwealth of Puerto Rico.

13. Upon information and belief, defendant, Manuel Marítnez Suárez, pursuant to the powers conferred upon him by Statute 34 L.P.R.A. §1722(b) has appraised the property in question in the sum of $19,800.00 and intends to hold the same as legal owner thereof.

14. The defendants, Luis Torres Massa, and Manuel Marítnez Suárez, have preceeded under the authority conferred by Act 4 of June 23, 1971 (24 L.P.R.A. §2512(a), (4)(b) and Act No. 39 of June 4, 1960, (34 L.P.R.A. §1722).

15. The plaintiff had no knowledge that its property was being used in connection with or in violation of the Controlled Substance Act of the Commonwealth of Puerto Rico. Defendants concede that plaintiff corporation, its agents, employees and/or representatives were in no way whatsoever involved in the criminal enterprise carried on by lessee, Donovan Olson. (Lessee was accused of using the plaintiff's property on May 6, 1972 to convey, transport, carry and transfer a narcotic drug known as "marihuana", within the ward of La Parguera, in violation of law).

The foregoing facts and issues are stipulated by and between the parties, this .... day of December, 1972, at San Juan, Puerto Rico.

WALLACE GONZALEZ OLIVER
Attorney General

FELIPE B. MONTALVO
Assistant Attorney General

NELLIE ORTIZ TORRES
Director, General Litigation Division

WILLIAM A. POWER
Attorney, Department of Justice
Attorneys for Defendants

By: .....

NACHMAN, FELDSTEIN, GELPI & ANTONETTI
Attorneys for Plaintiff

By: .....

[Appendix C. Continued]

PEARSON YACHT LEASING COMPANY

Division of Grumman Allied Industries, Inc.
Lease Contract No. 405

LEASE AGREEMENT, hereinafter called the "Lease", made and entered into in Garden City, Nassau County, State of New York, this ..... day of March 1971, by and between Pearson Yacht Leasing Company, Division of Grumman Allied Industries, Inc., a corporation incorporated under the laws of the State of New York, and having its principal office at 600 Old Country Road, Garden City, N. Y., hereinafter called the "Lessor", and Donovan & Loretta Olson, hereinafter called the "Lessee".

WITNESSETH:

1. Lessor hereby leases to Lessee, and Lessee hereby hires from Lessor, the vessel and accessories, hereinafter called "Equipment", described in Schedule "A", hereto annexed and made a part hereof, upon the terms and conditions contained in this agreement.

2. This Lease is for the term of 60 months from the date of delivery of the Equipment described in the aforementioned Schedule "A", during which term Lessee will pay Lessor as rent for the use of the Equipment in accordance with this agreement and the schedule covered by Schedule "B", hereto annexed and made a part hereof.

Payment of said rent shall commence as of the date of the Lease and shall continue on the same date each and every month thereafter for the term of this Lease. Late payments of rentals shall be charged 1½% monthly on deliquent amounts.

3. (a) Lessee shall furnish at its own cost and expense gasoline or other fuel, lubricants, grease, anti-freeze solution, and replacement parts and supplies appropriate for the use and operation of the Equipment leased hereunder, and shall service, repair and maintain all said Equipment in good condition, but Lessee shall not be responsible for normal wear, tear and depreciation. Lessee is to have the benefit of any manufacturer's warranty as to each Equipment and all accessories thereon.

(b) Lessee shall permit Lessor to inspect any and all said Equipment upon Lessee's premises or elsewhere at any reasonable time, and cooperate fully to facilitate such inspections.

(c) Lessee shall pay any license fees, tolls, taxes levied by federal, state or municipal governments or authorities against said Equipment and also all costs of any inspection required by the state in which Lessee keeps and operates such Equipment.

4. (a) Prior to the delivery of said Equipment, Lessee shall at its own expense furnish the Lessor with insurance policies with loss payable clause to Lessor placed with insurance company satisfactory to Lessor with premiums paid, insuring Lessor against damage, loss or destruction of the Equipment under this lease sustained in any manner whatsoever in an amount of not less than the replacement value of said Equipment.

Lessee shall also obtain and furnish Lessor public liability insurance policies with insurance company satisfactory to Lessor with premiums paid, insuring Lessor against damages or claims for personal injuries arising in any manner out of the operation or use of said Equipment. Said policy or policies to contain limits of $200,000 to $500,000 and against damages for claims for property damages in an amount not less than Fifty Thousand Dollars ($50,000).

In case of failure of the Lessee to procure and maintain said insurance and pay the premiums therefor, in addition to any and all other remedies to the Lessor as contained in this Lease, Lessor may effect such insurance, in which event the cost thereof shall be payable by the Lessee as additional rent with the next month's installment of rent.

(b) Lessee hereby assumes all liability for, and agrees to save Lessor harmless against all loss imposed by law resulting from the use or operation, during the term of the Lease hereunder, of Equipment leased hereunder and arising out of death or bodily injury to Lessee or any other or different person or persons and/or damage to property belonging to Lessee or to any other or different person or persons. Lessee agrees to defend at its own expense all claims or suits for damages for the causes hereinbefore set forth and to pay all costs hereof.

(c) The damage, destruction, loss, disability or forfeiture of said Equipment shall not discharge or diminish the obligation of Lessee to pay rent as provided in this agreement, except as may be otherwise mentioned herein.

(d) In the event the leased Equipment is damaged, its repair shall be the responsibility and obligation of the Lessee. In every such instance, Lessor agrees to assign to Lessee any and all rights Lessor may have under insurance policies owned or controlled by Lessor with respect to such damage, as well as any rights Lessor may have to be reimbursed for such damage pursuant to insurance coverage carried by others, provided that the Lessee shall not then be in default of any of the terms and conditions of the lease on its part to be performed.

(e) In the event the leased Equipment is destroyed, stolen, or damaged to such extent that Lessee finds it undesirable to continue its use, all of the Lessor's right, title and interest in the Equipment, together with any and all

rights it may have with respect to such Equipment under insurance carried by others, shall be assigned to Lessee or its designee upon payment by Lessee of the remaining unpaid rental payments as to such Equipment up to the end of the contract term (proportionately adjusted to reflect the deduction in Lessor's financial or carrying costs).

5. Lessee agrees that Lessor may assign all right, title and interest of Lessor in and to such lease agreements, all monies due and to become due thereon, and the Equipment leased hereby, and Lessee agrees, if requested by such assignee, to pay direct to such assignee all monies due and to become due by it on such lease agreements. Lessee may, upon written consent of Lessor, assign its interest in this agreement as to the Equipment described in Schedule "A". All benefits, rights and liabilities then existing shall flow to and be assumed by the assignee, but without relieving the assignor of any liability hereunder.

6. Lessee may use the Equipment leased hereunder at any and all times for any and all legal purposes. Lessor shall not use or suffer or permit any Equipment to be used for any unlawful purpose or for the transportation of any property or material deemed extra hazardous, explosive or inflammable.

7. In case of the Lessee's failure to pay the rentals provided for above, or to fulfill or perform the conditions imposed upon the Lessee by this lease, the Lessor shall give written notice to the Lessee of such default. If the condition is not corrected within fifteen (15) days after date of written notice, the Lessor shall have the right, at its option, to declare all unpaid rentals forthwith to be due and payable and to terminate this agreement and Lessor shall have the right:

(a) To enter any premises where any Equipment may be, with or without the assistance of any person or persons,

and to take, retake and remove the same, including all substituted parts and accessories, without being liable to any suit, action, defense, or other proceedings by the Lessee, and to hold, use, sell, lease or otherwise dispose of any of said Equipment or to keep said Equipment idle, severally or entirely as the Lessor may elect, such election by the Lessor to have no effect upon Lessee's liability under this agreement, or Lessor's rights hereunder and, upon such possession or repossession, all Lessee's rights herein and thereto, shall cease and determine.

(b) If the Lessee, or its agents, shall fail or refuse to deliver, or shall convert or destroy any of the lease property, the Lessor shall have the right, as an alternative in place of subdivision (a) hereof, and in addition to such other remedies as are available to it hereunder, to hold the Lessee and its said agents liable for the value of the said withheld or destroyed property.

(c) If any action shall be brought by either party to this lease for the interpretation thereof, for the recovery of damages resulting from the breach of any term thereof, the prevailing party to such action shall be entitled to reasonable attorney's fees incurred thereby, and said fees shall be included in the judgment awarded in such action to the prevailing party. Lessee does hereby further covenant and agree that all rights and remedies hereunder are cumulative and not exclusive and that a waiver by Lessor of any breach by Lessee of the terms, covenants and conditions hereof, shall not constitute a waiver of future breaches or defaults.

8. If before the commencement of the term of this agreement, or at any time during the term, Lessee shall make an assignment for the benefit of creditors, or shall become insolvent, or if a receiver or trustee of Lessee's property shall be appointed, or if the Lessee (where it is a corporation) shall terminate its existence or take any steps to terminate

its existence, or if a petition is filed by or against Lessee pursuant to any of the provisions of the United States Bankruptcy Act, as amended, for the purpose of effecting an arrangement or composition with Lessee's creditors, then and in each and every such case, this agreement shall terminate forthwith, without any further act or notice by the Lessor, and the Lessor shall immediately have any and all of the rights set forth herein including, but not limited to, paragraphs designated "7" and "12" hereof.

9. The Equipment shall be based at the home port of Lessee, as of contract date, and shall not be moved to a new permanent location without the written consent of the Lessor. Lessee may sublet Equipment to a third party only with the written approval of the Lessor.

10. All said Equipment shall remain personal property of the Lessor and the title thereto shall remain in the Lessor exclusively. Lessee shall keep the Equipment free from any and all liens and encumbrances. Upon termination of the Lease the Equipment shall be returned to Lessor, at Lessee's sole expense and in the same condition as when received by Lessee, less reasonable wear and tear resulting from proper use thereof. All replacement parts, additions and accessories incorporated in or affixed to the Equipment after the commencement of the Lease shall become the property of the Lessor.

11. Lessor agrees together with Lessee that Lessor is the lawful owner of said Equipment free from all encumbrances, and that, conditioned upon Lessee's performing the provisions hereof, Lessee shall use and maintain the Equipment in a rightful manner during said term without interference. The Lessor or any assignee of Lessor is authorized to file any Financial Statements without the signature of the Lessee.

12. Upon termination of this agreement, as provided by

paragraphs numbered "7" and "8", or otherwise, the Lessor, in addition to any or different rights in this agreement provided, shall be entitled to all gains and/or profits prevented and damages sustained, liquidated herein for all purposes including claims and suits against the Lessee's assets in bankruptcy, reorganization or arrangement proceedings, or pursuant to other provisions of the United States Bankruptcy Act, or in any assignment for the benefit of creditors proceedings as follows:

(a) All sums due and unpaid at the time agreement is terminated.

(b) The total of sums which would have become due under the normal operation of this agreement from the date of such termination to the date it would have normally expired had it not been earlier terminated.

In determining said liquidated damages, the parties have made due allowances for the Lessor's investment in buying and/or reconditioning the leased Equipment, the uncertainty of leasing them to others, cost to Lessor for the period during which they may remain idle, or if sold, the uncertainty of the sales price and the Lessor's loss in selling said Equipment, commissions and legal expense to be paid, etc.

13. Nothing contained in this agreement shall affect the Lessor's right to receive payment from a Trustee, Receiver, Debtor or other representative of the Lessee, in bankruptcy, reorganization or arrangement proceedings, or otherwise, or from an Assignee for the Benefit of Creditors, for the use of the Equipment subsequent to the termination of this agreement; provided, however, that the payment received therefrom shall be offset against the liquidated damages provided for in paragraph "12" above.

14. This agreement shall extend to and be binding upon

the successors and assigns of the parties hereto.

15. All notices to be given to Lessor shall be given by depositing the same in the United States mail, registered or certified, postage prepaid and addressed to Lessor as follows: Pearson Yacht Leasing Company, 600 Old Country Road, Garden City, N. Y. 11530.

All notices to be given to Lessee shall be given by depositing the same in the United States mail, registered or certified, postage prepaid and addressed to Lessee as follows:

Mr. & Mrs. Donovan Olson
Blvd Monroig AX 36 Levittown,
Cataño, Puerto Rico

16. The Lessor is authorized to file any required financing statement without the signature of the debtor.

17. This agreement, with Schedule "A" and Schedule "B" affixed hereto and made part hereof, constitute the entire agreement and understanding of the Lessor and Lessee, and shall not be amended or altered in any way unless such amendment or alteration be endorsed hereon in writing and signed by the executive officers of both parties or, if the Lessee is not a Corporation, by the Lessee in person.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly executed, in triplicate, as of the day and year first above written.

LESSOR: PEARSON YACHT LEASING COMPANY

By ROBERT F. LOW
Director

LESSEE: DONOVAN & LORETTA OLSON

By DONOVAN OLSON
Donovan Olson *Title*

By LORETTA OLSON
Loretta Olson

Schedule "A"

This Schedule "A" is part of and subject to the Lease Agreement No. 405, between Pearson Yacht Leasing Company, "Lessor", and Donovan & Loretta Olson, "Lessee", dated March 15, 1971.

DESCRIPTION

1 — Pearson 300 Hull No. 127 with the following equipment: BOW Rail; Lifelines; 2 Boarding Gates; Stern Rail; Genoa Gear; Sea Hood; H & C Water Pressure System; Shower; Edson Wheel w/compass; Edson Brake; Interior Handrails; Ex. Water Tank; 2 Add'l Opening Ports; Two-Tone Deck; Electric Bilge Pump; Fabric Cushions; Carpets; Curtains; Diesel Engine; Winches; Stove; Roller Furling; Roller Reefing; Salt Water Pump; Cockpit Cushions; Tachometer and 2 Dorado Ventilators; and Mainsaid; Jib and Sail Cover.

LESSOR: PEARSON YACHT LEASING COMPANY

By ROBERT F. LOW
Director

LESSEE: DONOVAN & LORETTA OLSON

By DONOVAN OLSON
Donovan Olson *Title*

By LORETTA OLSON
Loretta Olson

Executed in Triplicate this 15th day of March, 1971

Schedule "B"

This Schedule "B" is part of and subject to the Lease Agreement No. 405, between Pearson Yacht Leasing Company, "Lessor", and Donovan & Loretta Olson, "Lessee", dated March 15, 1971.

Rental Charges

Price Basis		Per Unit Monthly
Based on Unit Price of	$23,983.00	$474.66*
Less: Down Payment	2,887.00	
Amount Financed	$21,096.00	

*NOTE: Late payment of rentals are charged 1½% monthly on delinquent amounts.

Annual Percentage Rate: 12.50%

LESSOR: PEARSON YACHT LEASING COMPANY

By Robert F. Low
Director

LESSEE: DONOVAN & LORETTA OLSON

By Donovan Olson
Donovan Olson *Title*

By Loretta Olson
Loretta Olson

Executed in Triplicate this
15th day of March, 1971

Addendum No. 1

This Addendum No. 1 is part of and subject to the Lease Agreement No. 405, between Pearson Yacht Leasing Company, "Lessor", and Donovan & Loretta Olson, "Lessee", dated March 15, 1971.

Lessee is hereby given the right and privilege, at its option, to purchase vehicles described in Schedule "A" of this lease, at the respective option prices for the periods of time indicated below, provided that all rents theretofore due and payable have been paid in full.

Option Period	Percentage Depreciation — Option Period	Option Price Per Unit
	End of 1st year	$18,092.24
	End of 2nd year	14,456.72
	End of 3rd year	10,239.44
	End of 4th year	5,440.40
	End of 5th year	1.00

The option to purchase shall be exercisable by Lessee by giving Lessor not less than thirty (30) days notice in writing prior to the expiration of the 60 months term. Lessor covenants and agrees that upon exercise of the option Lessor shall duly execute and deliver to the Lessee all documents necessary and proper to effect transfer of ownership of said vehicles to Lessee, free and clear of all encumbrances and liens (other than encumbrances or liens suffered or permitted by Lessee to become effective thereon) upon payment by the Lessee in cash or certified check of the full balance of said option price and thereupon this lease shall terminate

and no further rents shall become due thereunder with reference to the vehicles leased by the Lessee.

LESSOR:
PEARSON YACHT
LEASING COMPANY

By ROBERT F. LOW
Director

LESSEE:

DONOVAN &
LORETTA OLSON

By DONOVAN OLSON
Donovan Olson *Title*

By LORETTA OLSON
Loretta Olson

Executed in Triplicate this
15th day of March, 1971

In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-157

ASTOL CALERO-TOLEDO, Superintendent of Police, EDGAR R. BALZAC, Administrator of the General Services Administration of the Commonwealth of Puerto Rico,
APPELLANTS,

v.

PEARSON YACHT LEASING CO., a Division of Grumman Allied Industries, Inc.,
APPELLEE.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

MOTION TO AFFIRM

GUSTAVO A. GELPI
P. O. Box 2407
San Juan, Puerto Rico 00903
Attorney for Appellee

Of Counsel:
NACHMAN, FELDSTEIN & GELPI

Blanchard Press, Inc., Boston, Mass. — Law Printers

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ASTOL CALERO-TOLEDO, Superintendent of Police, EDGAR R. BALZAC, Administrator of the General Services Administration of the Commonwealth of Puerto Rico,

APPELLANTS,

v.

PEARSON YACHT LEASING CO., a Division of Grumman Allied Industries, Inc.,

APPELLEE.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

MOTION TO AFFIRM

Appellee, pursuant to Rule 16(1)(c) and (d) of the Rules of the Supreme Court of the United States, moves that the final judgment and order of the District Court

be affirmed on the ground that the decision of the District Court is so obviously correct under the principles established by this Court in *Fuentes* v. *Shevin*, 407 U.S. 67 (1972), and *United States* v. *United States Coin and Currency*, 401 U.S. 715, 721, 722 (1971), as to warrant no further review by this Court. Furthermore, the appeal should be dismissed insofar as it purports to raise issues of fact not raised in the Court below.

Opinion Below

The memorandum opinion and order of the District Court is not reported as yet, but is set forth in Appendix "A" of appellants Jurisdictional Statement. The judgment of the Court, filed and entered on June 15, 1973, is included herewith (Appendix 1).

Jurisdiction

The jurisdiction of this Court to review the decision of the District Court is not contested.

Questions Presented

1. Whether appellee had a property interest in the yacht as would support a claim of deprivation of property without due process of law and taking without just compensation, is not in issue because appellants stipulated that appellee was the "lawful owner" of the seized property (Appellants' Jurisdictional Statement, Appendix C, Paragraph 9). Consequently, they cannot raise this issue for the first time on appeal.

2. Whether seizure and forfeiture of a person's property without a hearing, due to lack of notice, is a denial of due process; and,

3. Whether seizure and forfeiture of an innocent person's property is confiscatory and therefore, a taking of property without just compensation.

Supplemental Statement

Appellants' Statement of the Case, as it appears in pages 3 to 6 of their Jurisdictional Statement, contains certain assertions which require clarification. This case was tried on stipulated facts, printed in Appellants' Appendix C, and the sole issue before the District Court was whether the contested statutes [The Controlled Substances Act of Puerto Rico, June 23, 1971 (24 L.P.R.A. §1201-1207), and the Uniform Vehicle, Mount, Vessel and Plane Seizure Act of June 4, 1960 (34 L.P.R.A. §§ 1721-1722)], in their application to plaintiff, violate the due process and the "Taking Clauses" of the Fifth and Fourteenth Amendments of the United States Constitution.

The stipulated facts submitted by the parties were adopted by the Court in its findings (printed in Appellants' Appendix A, at pp. 22-23).

The record, both in the District Court and before this Court, fails to reveal any effort on the part of appellants to question appellee's proprietary interest in the seized property. On the contrary, in their answer to the complaint and in the stipulation of facts, Paragraph 9, they admitted that at the time of the seizure "the lawful owner of the seized property was Pearson Yacht Leasing Company".[1] Notwithstanding, appellants now purport to create an issue as to appellee's property right in the Court below by stating as a conclusion that "Pearson *sold* the yacht to its 'lessee' ".[2]

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[1] Appellants' Jurisdictional Statement, Appendix C, page 39.
[2] Id., at page 4.

There is another statement with which issue is taken.[3] The three-judge court never "ordered Puerto Rico to pay Pearson the appraised value of the yacht", as stated by appellants. It merely indicated that it would not provide a specific remedy "inasmuch as Section 1722(d) of Title 34, provides adequate relief".[4]

In commenting on the holding of the Court, appellants fail to include lack of notice as an element thereof.[5] Instead, they resort to their own interpretation to conclude at page 6 of the Statement, that "(The court did *not* hold that Puerto Rico had failed to make reasonable efforts to notify interested parties before the forfeiture, specifically indicating that had this issue been reached it would have ruled with appellants, app. A, infra, p. 26)". The decision of the District Court is quite clear in regard to the issue of notices:

> "For the foregoing reasons, it is hereby declared that Section 2512 (a) (4) of Title 24, and Section 1722(a) of Title 34 of the Laws of Puerto Rico are unconstitutional, and an injunction will issue permanently restraining defendants and their successors from enforcing the foregoing provisions insofar as they deny the owner or person in charge of property an opportunity for a hearing, *due to the lack of notice,* before the seizure or forfeiture of its property *and, insofar as a penalty is imposed upon innocent parties.*"[6] [emphasis supplied].

The Court's order declares the statutes unconstitutional as applied to appellee, Pearson, on the ground that hearing, *due to lack of notice,* was not given before the seizure and forfeiture *and* a penalty is imposed upon innocent

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[3] Id., at page 5.
[4] Id., Appendix A, at page 30.
[5] Id., at page 6.
[6] Appellants' Jurisdictional Statement, Appendix A, p. 29.

parties. The injunction eventually filed and entered by the Court on June 15, 1973,[7] is limited to the facts of this case, that is, an innocent owner deprived of its property without compensation and without a hearing due to lack of notice. Based upon the factual setting before it, the Court relied on *Fuentes* v. *Shevin*, 407 U.S. 67 (1972), and *United States* v. *United States Coin and Currency*, 401 U.S. 715, 721-722.

Finally, it must be pointed out that appellants at no time presented evidence or even raised an issue as to appellee's right to compensation. On appeal, they now pretend to raise the issue for the first time.[8] On the contrary, by the Stipulation of Facts they recognized appellee as the lawful owner of the property.

Argument

Appellants contend that the questions presented are substantial. Appellee agrees and points out that were it not for that fact, the case would not have been adjudicated by a three-judge court. *Monroe* v. *Pape*, 365 U.S. 167 (1961); *McNeese* v. *Board of Education for Community School District No. 187*, 373 U.S. 668 (1963); and *Lynch* v. *Household Finance Corporation*, 405 U.S. 538 (1972). Appellee, throughout the proceedings, has claimed that seizure and forfeiture of an innocent person's property without compensation and without a hearing, due to lack of notice, amounts to a substantial violation of constitutional rights. The District Court agreed and, consequently, enjoined defendants from continuing to deprive appellee of its rights.[9]

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[7] Judgment, Record on Appeal, Volume I, p. 23, printed herein as Appendix I.

[8] Appellants' Jurisdictional Statement, supra, Paragraph 4, at p. 17.

[9] Appellee's Appendix I, at pp. 12-13.

That the decision of the District Court adjudicated substantial constitutional rights does not, of itself, compel this Court to grant further review. Where the unconstitutionality of the challenged state statute is so patent and the decision of the three-judge court so obviously correct, the decision should be affirmed. The principles underlying the decisions in *United States* v. *United States Coin and Currency, supra,* and *Fuentes* v. *Shevin, supra,* are clearly dispositive of the present appeal and lead to the conclusion that the seizure and forfeiture of appellee's vessel without a hearing, due to lack of notice, and without compensation, is a violation of the constitutional amendments invoked. This is so despite appellants' belated attempts to save a statute which on its face is clearly unconstitutional.

Point I — Application of Due Process Requirement to Case

The argument that the statute involved meets due process requirements is wholly unfounded. For instance, Subsection (2) of Section 1722 of Title 34, Paragraph (a), starts out stating: "The proceedings shall be begun by the seizure of the property . . .". Notice and the opportunity for a hearing (the meaningfulness of this hearing is discussed in Point II, infra), is given only after the person has been summarily deprived of the property. Does such a procedure conform to the requirements of the due process clause? Appellee contends it does not.

The right to an opportunity for a meaningful hearing before being deprived of any significant property interest has long been recognized by this Court and recently reaffirmed in the *Fuentes* case. The only exception to justify postponing the hearing until after the event, has been in the case of *extraordinary situations* where some valid

governmental interest is at stake. These extraordinary situations were outlined by this Court in *Fuentes, supra,* (407 U.S. at p. ; 92 S. Ct. at p. 2000). Forfeiture proceedings are not one of those situations. Therefore, the lack of notice and consequential lack of opportunity for a meaningful hearing, which the challenged statute fails to provide and which were not given in this case, must be examined in the light of these principles.

There is no constitutional distinction beetween *Fuentes* pre-hearing seizures and the pre-hearing seizure authorized by the Puerto Rican statute. It simply cannot be said, as appellants pretend, that due process requirements are of any less basic importance to the owner or person in possession of certain property when the seizure is effected at the instance of a government officer, as in this case, the Superintendent of Police acting pursuant to a forfeiture statute as when it is effected by some other officer acting pursuant to a replevin statute. The establishment of a distinction between a debtor in default and a person suspected of having committed a crime for purposes of summary deprivation of property rights in indefensible as a basis for selectively applying the fundamental principle of due process enunciated in *Fuentes.* The application of the principles underlying *Fuentes* cannot turn on such a subjective test, which would grant unfettered power to a government official not only to seize property, but to adjudicate guilt prior to hearing. (It must be pointed out that the property involved herein is not by its own nature *malum in se*, such as contraband, narcotics, weapons, or, which is seized as evidence to be used in a criminal prosecution. *United States* v. *Jeffers,* 342 U.S. 48, 54; *Trupiano* v. *United States,* 334 U.S. 699, 710.)

Further, any attempt to vest these officials with such broad powers as claimed by appellants, could very well lend itself to the type of abuses which the "founding

fathers'' sought to curtail. It is precisely the ''overbearing concern for efficiency and efficacy which may characterize praise-worthy government officials'', that in many instances encroaches upon the fragile values of a vulnerable citizenry. *Stanley* v. *Illinois,* 405 U.S. 645, 656.

The suggestion by appellants that seizure in forfeiture proceedings is like seizure of evidence for a criminal proceeding so as to remove it from the ambit of the due process principle underlying *Fuentes,* is wholly spurious. The owner or possessor of property of the nature involved in this case is not likely to destroy or hide the same if given any prior notice. Whether it be an automobile, an airplane, a vessel or even a mount, it is usually too valuable to destroy for the sake of merely depriving the government of the opportunity to forfeit the same. Further, even if appellant had so established, one fails to see how the destruction of the conveyance would interfere with or jeopardize criminal prosecutions. Likewise, it cannot be said that summary seizure in forfeiture proceedings serves any highly important governmental need in order to exempt it from the meaningful hearing and notice requirement of the due process clause. The District Court properly found forfeiture as not being one of those extraordinary situations justifying postponing a hearing, especially in view of appellants' failure to so claim or prove. (Appellants' Appendix A, at p. 28).

Appellee, like other litigants summarily dispossessed of their goods and chattels, is entitled to the same due process protection as any other citizen.

The considerations which appellants offer as countervailing justification for dispensing with prior notice and hearing, are no more adequate than those offered by the States of Florida and Pennsylvania in *Fuentes,* to override the interests of this appellee in being notified and given a meaningful hearing.

POINT II — APPLICATION OF "TAKING CLAUSE" TO CASE

The alleged errors in the application of the "taking clause" to the case at bar, were not committed. The position adopted by the Court in its opinion is, likewise, so obviously correct under the principles voiced by this Court in *Coin and Currency, supra,* as to warrant no further review.

Appellants do not seriously contest the conclusion reached by the Court on this issue, but instead suggest that the statute be construed as allowing innocence as a defense. The problem with this suggestion is that the Supreme Court of Puerto Rico had interpreted the statute as precluding such a defense. *Commonwealth* v. *Superior Court,* 94 P.R.R. 687 (1967). The fact that the Federal Court may not have desired, for reasons of its own, to be bluntly critical of the majority opinion of the court, should not be interpreted as an escape from the constitutional challenge presented. Obviously, the case reached litigation because of appellants' reluctance to return the property or pay its appraised value; thus, compelling adjudication of the constitutional claim. On appeal, error is alleged because the lower court declared the statute unconstitutional, "insofar as a penalty is imposed upon innocent parties", instead of interpreting the same as allowing such a defense. Were it not for *Commonwealth* v. *Superior Court, supra,* appellants' argument might carry some weight.

In any event, having declared the statute unconstitutional solely *"insofar as a penalty is imposed upon innocent parties"*, causes no more prejudice to the government than if the court had interpreted the statute as including innocence as a defense. In either case, appellants may still confiscate and impose a penalty upon those who are significantly involved in a criminal enterprise. Contrary to

what appellants would like this Court to believe, the statute was struck down when applied to situations where it is enforced to impose a penalty upon an innocent party. In this limited context, the decision of the court below is squarely within the expressions of this Court in *Coin and Currency*.

That the Puerto Rican statute was practically copied from federal forfeiture statute is not in this case a circumstance that would warrant further review by this Court. Unlike its federal counterpart, the Puerto Rican statute has no provision like 18 U.S.C. § 1618 for remission of the penalty in the case of innocent persons. It was precisely because such a remedy was available that this Court did not reach the issue in *Coin and Currency, supra*, at page 721.

The considerations advanced as justification for a statute having such broad interpretation is no more adequate than those advanced in *Coin and Currency* to override the interest of an innocent person from being penalized by forfeiture. If appellants' argument were to be carried to its logical conclusion, shipowners, car rental companies, banks and a host of other enterprises, would confront the dilemma of having to stop doing business or risk the loss of their property. Such alternatives are foreign to our constitutional system.

The considerations adduced in the third and fourth part of the Jurisdictional Statement concern issues of fact that were not properly brought before the District Court. Appellants' belated attempt to litigate these matters on appeal should not be entertained.

Conclusion

Appellee respectfully submits that this Court's decisions in *Fuentes* v. *Shevin*, and in *United States* v. *United States*

Coin and Currency, supra, are clearly dispositive of the question presented by this appeal, and that the final judgment and order of the District Court should be affirmed without further review by this Court.

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APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO
Civil No. 1018-72

PEARSON YACHT LEASING COMPANY,
Division of Grumman Allied Industries, Inc.,
PLAINTIFF,

v.

ASTOL CALERO, as Superintendent of Police of the Commonwealth of Puerto Rico, and EDGAR R. BALZAC, as Administrator of the General Services Administration of the Commonwealth of Puerto Rico,
DEFENDANTS.

JUDGMENT

This cause came to be heard on plaintiff's motion seeking permanent injunction against defendants, and the Court having heard oral argument and considering the stipulation of facts filed by the parties, and it appearing to the Court that the defendants committed, are committing and intend to continue to commit acts in violation of plaintiff's constitutional rights; and it further appearing that unless restrained by order of this Court the plaintiff will continue to be deprived of its property without due process of law and without just compensation, now, after due deliberation having been had thereon and for the reasons set forth in the Memorandum Opinion and Order filed and entered March 29, 1973, it is

ORDERED, ADJUDGED and DECREED, that defendants Astol Calero and Edgar R. Balzac, their officers, agents, representatives, employees and all persons in active concert and participation with them be, and they hereby are, permanently enjoined and restrained from in any manner

depriving the plaintiff of its property without due process of law and without just compensation; and it is further

ORDERED, ADJUDGED and DECREED, that defendants Astol Calero and Edgar R. Balzac, their officers, agents, representatives, employees and all persons in active concert and participation with them be, and they hereby are permanently enjoined and restrained from enforcing the provisions of Section 2512(a)(4) of Title 24 and Section 1722(a) of Title 34 of the Laws of Puerto Rico Annotated, insofar as these deny the owner or person in charge of property an opportunity for a hearing due to the lack of notice before the seizure and forfeiture of its property, and insofar as a penalty is imposed upon an innocent party; and it is further

ORDERED, ADJUDGED and DECREED, that Section 2512(a)(4) of Title 24, and Section 1722(a) of Title 34 of the Laws of Puerto Rico Annotated be, and they hereby are declared unconstitutional.

The present judgment is to be effective twenty (20) days after the date of its issuance in view of the reasons set out in our order of this day.

San Juan, Puerto Rico, June 15, 1973.

(s) FRANK M. COFFIN
FRANK M. COFFIN, *Chief Judge*
U. S. Court of Appeals for the First Circuit, Presiding

(s) HIRAM R. CANCIO
HIRAM R. CANCIO, *Chief Judge*
U. S. District Court for the District of Puerto Rico

(s) JOSE V. TOLEDO
JOSE V. TOLEDO, *Judge*
U. S. District Court for the District of Puerto Rico

No. 73-157

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

ASTOL CALERO-TOLEDO, Superintendent of Police, EDGAR R. BALZAC, Administrator of the General Services Administration of the Commonwealth of Puerto Rico, *Appellants*,

v.

PEARSON YACHT LEASING CO., *Appellee*

On Appeal from the United States District Court for the District of Puerto Rico

---

APPELLANTS' BRIEF

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PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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APPELLANTS' BRIEF

OPINION BELOW

This is an appeal from the judgment of the United States District Court for the District of Puerto Rico, sitting as a three-judge court, entered on March 29, 1973. The opinion of the court below is not yet re-

ported. A copy of the memorandum opinion and order is attached to the jurisdictional statement as Appendix A[1] thereto, p. 19.

JURISDICTION

This suit was brought by Appellee Pearson Yacht Leasing Co. ("Pearson") under 28 U.S.C. §1343 to redress alleged deprivation of Pearson's rights under the Fifth and Fourteenth Amendments. Defendants-Appellants are the current Superintendent of Police and the Administrator of the General Services Administration of the Commonwealth of Puerto Rico (hereinafter collectively referred to as "the Commonwealth"). A three-judge court was convened pursuant to 28 U.S.C. § 2281. This Court has never passed on the applicability of 28 U.S.C. § 2281 to the Commonwealth of Puerto Rico. But district courts have taken Puerto Rico to be a "state" within contemplation of § 2281 ever since shortly after it became a commonwealth. *Mora* v. *Meijas,* 115 F.Supp. 610 (D.P.R. 1953); *Wackenhut Corp.* v. *Aponte,* 266 F.Supp. 401 (D.P.R. 1966). See also *Mora* v. *Meijas,* 206 F.2d 550 (1st Cir. 1953), and *Americana of Puerto Rico, Inc.* v. *R. Kaplas,* 368 F.2d 431 (3rd Cir. 1966). The judgment of the District Court was entered on March 29, 1973, and notice of appeal was filed in that court on May 8, 1973. Assuming that the three-judge court was properly called, the jurisdiction of the

[1] In this brief, parts of the record previously printed as appendices to Appellants' jurisdictional statement will be cited "Jrsd. Stat., App. A, p. 19". Inasmuch as the filing of briefs in this case is being accelerated pursuant to the Clerk's request, and the appendix is to be filed after Appellant's brief, citations to the appendix will be to certified record pagination and follow the designation "R".

Supreme Court to review this decision by direct appeal is conferred by Title 28, United States Code, Section 1253. *Pa. Public Util. Comm'n* v. *Pa. R.R. Co.,* 382 U.S. 281 (1965); *Stainback* v. *Wo Hock Ke Lok Po,* 336 U.S. 376 (1949); *Rorick* v. *Bd. of Comm'rs of Everglades Drainage Dist.,* 307 U.S. 208 (1939). This Court noted probable jurisdiction on October 9, 1973.

STATUTES INVOLVED

The pertinent parts of 24 L.P.R.A. §2512 (a)(4) and (b) (Supp. 1972), 34 L.P.R.A. § 1722 (a)-(e), and 23 L.P.R.A. § 451, 451b, and 451c are set forth in Appendix I hereto.

QUESTIONS PRESENTED

1. Whether Pearson, nominally lessor but effectively conditional vendor of a yacht seized by and forfeited to the Commonwealth, had such a property interest in the yacht as would support a claim of deprivation of property without due process of law and taking without just compensation.

2. Whether certain confiscation and forfeiture statutes of the Commonwealth, in authorizing seizure of property without notice and prior adversary hearing, deny persons with interests therein due process of law.

3. Whether these statutes must be construed as authorizing the taking without just compensation of Pearson's property, to wit, by denying owners and lienholders who have consented to the use by others of the property seized the right to challenge the forfeiture on the grounds of their own innocence in the wrong for which the property is seized and forfeited, and if so, whether such statutes are constitutional.

STATEMENT [2]

Pearson is a New York incorporated and based division of Grumman, Inc., engaged in leasing pleasure yachts. On March 15, 1971, Pearson leased a yacht to Donovan and Loretta Olson ("Lessee") for a five-year term.[3] The parties simultaneously executed an option contract giving Lessee the right to purchase the yacht on thirty days' notice at any time during the lease term, the option price diminishing over that period at a depreciation rate equivalent to the monthly rental. At the end of the fifth year the yacht could be purchased for $1.00. Jrsd. Stat., App. C, pp. 53-54. In effect, then, Pearson sold the yacht to its "lessee", retaining title until it had received full payment.

On May 6, 1972, Puerto Rican authorities discovered marihuana on the yacht. Under the Controlled Substances Act of Puerto Rico, 24 L.P.R.A. § 2102-2607 (Supp. 1972), App. I., *infra,* p. 1a, posses-

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[2] The factual record on which this appeal is based consists of a Stipulation of Facts and the lease and option-to-purchase agreements between Pearson and Lessee, all of which was printed as Appendix C to the Commonwealth's jurisdictional statement at p. 37.

[3] The lease agreement provided that Lessee was to use the yacht only for legal purposes; that Lessee, at its expense, was to insure Pearson against loss of the yacht "sustained in any manner whatsoever": that "*forfeiture*" of said Equipment shall not discharge or diminish the obligation of Lessee to pay rent . . . ." [emphasis supplied]; that Lessee had the exclusive right to use and possession of the Yacht during the term unless and until default by Lessee, written notice of default by Pearson, expiration of a fifteen-day correction period, and exercise by Pearson of its right to terminate; and finally, that the yacht was to be based at the contract date home port of Lessee, specified as a Puerto Rican address, except with the written consent of Pearson. Jrsd. Stat., App. C, pp. 42-50.

sion of marihuana is prohibited. It was stipulated at trial that Pearson was wholly innocent of this violation of law. On July 11, 1972, the yacht was seized by the Superintendent of Police, predecessor in office of appellant Astol Calero-Toledo. 24 L.P.R.A. § 2512 (a)(4) (Supp. 1972) subjects to forfeiture to the Commonwealth of Puerto Rico vessels used to transport controlled substances. Under § 2512(b) such property is to be seized and forfeited in the manner provided by the Uniform Vehicle, Mount, Vessel and Plane Seizure Act, 34 L.P.R.A. § 1722 b. App. I., *infra,* p. 1a.

Section 1722 requires the Superintendent to serve notice of the seizure "on the owner of the property seized or the person in charge thereof or any person having any known right or interested [sic] therein" within ten days. The Superintendent duly notified Lessee, who was on record with the Division of Marine Operations of the Ports Authority as the owner of the vessel. 23 L.P.R.A. § 451b and 451c require the owner of the vessel who wishes to operate it within the navigable waters of Puerto Rico to file an application for an identification number with the Authority. Neither the Superintendent nor Lessee notified Pearson, who was not on record with the Ports Authority. Jrsd. Stat., App. B, pp. 33, 34, 36; App. C, p. 39.

Lessee failed to challenge the confiscation within the fifteen-day period following service of notice on him as provided by §1722(a); under § 1722(c), the yacht then became subject to sale at auction or reservation for official use of the Government of Puerto Rico. The Chief of the Office of Transportation, predecessor in office of Edgar R. Balzac, second-named appellant, has retained the vessel pending outcome of this appeal. Pearson did not learn of the seizure until Lessee de-

faulted and Pearson unsuccessfully attempted, on October 19, 1972, to regain possession of the yacht. Jrsd. Stat., App. A, p. 22.

On November 6, 1972, Pearson filed suit in the United States District Court for the District of Puerto Rico under 28 U.S.C. § 1343, seeking to compel the return of the yacht, to have 24 L.P.R.A. §2512 (a)(4) and (b) and 34 L.P.R.A. § 1722 declared unconstitutional, and to enjoin their enforcement. R.8. Pearson also filed a motion to have a three-judge court convened in accordance with 28 U.S.C. § 2281. R.22. On December 21, the Commonwealth withdrew its opposition (on the basis of the abstention doctrine) to the convening of the three-judge court, and submitted thereto. R.40, Jrsd. Stat., App. A, p. 20.

In its memorandum opinion and order issued March 29, 1973, the three-judge court, in effect, ordered the Commonwealth to pay Pearson the appraised value of the yacht, as provided under 34 L.P.R.A. § 1722(d), and issued a permanent injunction against the enforcement of the challenged statutory provisions. The order was based on two holdings. First, the court declared that the challenged statute, in authorizing seizure without prior notice and hearing, permitted a deprivation of Pearson's property without due process, and was, therefore, "on its face unconstitutional." Jrsd. App. A, p. 27. The court claimed support for this proposition in *Fuentes* v. *Shevin,* 407 U.S. 67 (1972). (The court did *not* hold that the Commonwealth had failed to make reasonable efforts to notify interested parties before the *forfeiture,* specifically indicating that had this issue been reached it would have been decided in favor of the Commonwealth. Jrsd. Stat., App. A, p. 26). Second, the

court held that the statutes effected a taking of Pearson's property without just compensation in that, as the court read the Supreme Court of Puerto Rico's construction of the statutes, they do not allow the owner of seized property to nullify a forfeiture by proving his own innocence in the crime for which the property was seized. *United States* v. *United States Coin and Currency,* 401 U.S. 715, 721-722 (1971) (hereinafter, *Coin and Currency*), was said to be controlling. The district court entered judgment on June 15, 1973, R.87, based on its March 29, 1973 memorandum opinion and order.

SUMMARY OF ARGUMENT

Forfeiture is a standard statutory prescription for property used in connection with any of a broad range of violations of criminal law. *See, e.g.,* 21 U.S.C. § 881(a), from which the Puerto Rican statute was copied; 49 U.S.C. § 782; 26 U.S.C. § 7301; 56½ Ill. Stats. Ann. § 712, § 1505 (Supp. 1973); 18 Mich. Stats. Ann § 18.1070 (55) (Supp. 1973); 14A Fla. Stats. Ann. § 398.24. All of these statutes and many others must fall if the decision below is affirmed. None provides notice before seizure, which the district court held due process to require; none of the cited federal statutes by its terms protects innocent owners and lienholders against forfeiture, which the district court held is necessary to avoid taking without just compensation. If this Court affirms the district court's decision without modification, it will make drafting an effective and constitutional forfeiture statute an impossibility. Obviously, notice and an adversary hearing before seizure would enable the genuinely criminal to remove and hide any property sought to be seized.

The Commonwealth regards its seizure and forfeiture statutes as being particularly important to its ability to control traffic in illegal drugs. This is especially so since most illegal drugs are smuggled into the island by plane or boat. Manifestly, the ability to obtain forfeiture of the vehicle or vessel used in connection with the commission of a crime is itself an important inducement to obedience of the drug laws; it also assists in controlling the instrumentalities of crime. The effect of the challenged statutes being on the books is that the legislature of Puerto Rico has made the determination that such statutes are required or at least are useful and convenient to the carrying out of highly important governmental functions. This determination, especially in view of the Commonweath's peculiar status vis-a-vis the United States, must not lightly be disregarded.

The decision of the court below would require material reassessment of our understanding of the Fourth Amendment's guarantee against "unreasonable searches and seizures": if notice and an adversary hearing must be provided before property whose possessor has already been arrested can be seized, does it not follow that notice and an adversary hearing must be provided before the suspect himself can be arrested?

We respectfully submit that the decision of the court below is clearly erroneous. As concerns the seizure issue, Pearson was not deprived of any property interest by the seizure of the yacht from Lessee because it had no possessory interest whatsoever in the vessel at that moment, only a security interest, or at most bare title. But even if Pearson had standing to complain, due process has never been construed by this

Court to require an adversary hearing before *seizure*, related to a quasi-criminal proceeding such as forfeiture, and *Fuentes* v *Shevin*, cited by the district court as supporting that construction, expressly rejects it. Due process does require an attempt to provide appropriate notice and opportunity for hearing before *forfeiture;* but the challenged statutes make adequate provisions for this, and the district court expressed satisfaction with Puerto Rico's efforts to notify parties with interests in the yacht.

The district court found that Pearson's property was taken without "just compensation" because it would have been barred, under Puerto Rican law, from defeating the forfeiture by establishing its own innocence of the particular crime involved. This conclusion is incorrect for four reasons. First, there is a threshold question of Pearson's standing. Depending upon the proper interpretation of another part of the Puerto Rican statutes, Pearson either still has, or once had but lost by inaction, an opportunity to present its defenses to a Puerto Rican court. In neither case can Pearson be found to have suffered any loss from the constitutional infirmity it alleges. Second, this Court's statement in *Coin and Currency, supra,* at 721-22, that forfeiture statutes "are intended to impose a penalty only upon those who are significantly involved in a criminal enterprise" has never been authoritatively interpreted to require legislative provision of such a defense as a condition to the constitutionality of forfeiture statutes; the weight of the expressions of lower courts is against this interpretation; and policy and precedent are against such a requirement. Third, even if the district court was correct in finding that any constitutionally sound forfeiture

statute must permit the defense, there is ample Puerto Rican precedent for recognizing it without invalidating the statutes. The court below should have followed these precedents to avoid declaring the statutes unconstitutional. Fourth, it would be grossly unjust to permit Pearson to extract from Puerto Rico the appraised value of the yacht. Pearson is already entitled, under its agreement with Lessee, to the insurance proceeds and to an action against Lessee for the balance of the rent due, each of which is presumably at least equal in value to the yacht when seized, as stipulated by Pearson itself. Moreover, whatever opportunities to contest the forfeiture Pearson did have or should have had, it lost them by its own negligent failure to register its interest in the yacht with the Puerto Rican Ports Authority as required by the laws of Puerto Rico.

ARGUMENT

I. The Court Below Erred in Holding That Seizure Without Notice Deprived Pearson of Property Without Due Process of Law.

Initially, the record establishes that Pearson suffered no injury, of a character sufficient to justify a complaint of deprivation of its property without due process, as a result of the yacht's seizure. Under Clauses 6 and 11 of the lease, Lessee, not Pearson, had the exclusive right to possession of the yacht at the time of seizure. Jrsd. Stat., App. C, pp 45, 47. In Puerto Rico, title to seized property does not pass until forfeiture, *Downs* v. *Porrato,* 76 P.R.R. 572 (1954). Therefore the court below erred when it found that Pearson "has been deprived, since [the seizure of the yacht, on] July 11, 1972 of valuable property . . ."

Jrsd. Stat., App. A, p. 21. And it is therefore impossible for the *seizure* of the yacht to have violated Pearson's rights under the due process clause.

The district court found the statute unconstitutional on its face because it made no provision for notice and a hearing before seizure. The district court cited *Fuentes* v. *Shevin,* 407 US 57 (1972), as prohibiting such a "deprivation", and concluded that "*forfeiture*" is not one of those extraordinary situations justifying postponing a hearing" [all emphasis supplied unless otherwise indicated]. Jrsd. Stat., App. A, p. 28. But the issue, as put by the court below, is whether *seizure* involves considerations justifying postponing a hearing; Puerto Rico, like other American jurisdictions, does provide opportunity for a hearing before *forfeiture.* The replevin statutes which were held in *Fuentes* v. *Shevin* to deprive without due process were described by this Court as follows:

> The statutes, moreover, abdicate effective state control over state power. Private parties, serving their own private advantage, may unilaterally invoke state power to replevy goods from another. No state official participates in the decision to seek a writ; no state official reviews the basis for the claim to repossession; and no state official evaluates the need for immediate seizure. (407 U.S. at 93)

The Court then went on to say that:

> *The seizure of possessions under a writ of replevin is entirely different from the seizure of possessions under a search warrant.* First, the search warrant is generally issued to serve a highly important governmental need—e.g., the apprehension and conviction of criminals—rather than the mere private advantage of a private party in an

> economic transaction. Second, a search warrant is generally issued in situations demanding prompt action. The danger is all too obvious that a criminal will destroy or hide evidence or fruits of his crime if given any prior notice. Third, the Fourth Amendment guarantees that the state will not issue search warrants merely upon the conclusory application of a private party. It guarantees that the state will not abdicate control over the issuance of warrants and that no warrant will be issued without a showing of probable cause. *Thus, our decision today in no way implies that there must be opportunity for an adversary hearing before a search warrant is issued.* (*Id. at* 93-94, *n.* 30.)

The considerations expressed by the Court in *Fuentes* v. *Shevin,* as distinguishing seizure under a search warrant from seizure under a writ of replevin, apply generally to seizure in connection with a forfeiture proceeding. In Puerto Rico, seizure pursuant to the Controlled Substance Act, 24 L.P.R.A. 2512, can only apply to vehicles used in connection with the commission of a crime, where prompt action is generally necessary, and can only occur if authorized by a "high government official", i.e., "the Secretary of Justice [Attorney General], the Secretary of the Treasury or the Police Superintendent." 34 L.P.R.A. 1722(a). Thus, seizure in a forfeiture proceeding, like seizure of evidence for a criminal proceeding has been held subject to the "probable cause" requirement of the Fourth Amendment, not the adversary hearing requirement of the due process clause.[4] *United States* v.

[4] It would be especially absurd to require notice before seizure on the specific facts of this case: is the commonwealth to carry the burden of notifying all holders of security interests in a vessel transporting contraband before seizing it?

Troiano, 365 F.2d 416 (3rd Cir. 1966), *cert. denied* 385 U.S. 958 (1966); *Burge* v. *United States,* 342 F.2d 408 (9th Cir. 1965), *cert. denied* 382 U.S. 829 (1965): *cf.* 24 L.P.R. § 2510 (Supp. 1972).

The due process clause does obligate the state to make efforts "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action (in which their interests will be affected)," *Mullane* v. *Central Hanover Tr. Co.,* 399 U.S. 306, 314 (1950); *Robinson* v. *Hanrahan,* 409 U. S. 38 (1972). The challenged statute provides for such notice, 34 L.P.R.A. § 1722(a), and the court below stated that "from the record in this case, we are not disposed to rule that the Commonwealth of Puerto Rico did not have reason to believe that notice to the owner was, in fact, given." Jrsd. Stat., App. A, p. 26. Accordingly, the court below unquestionably erred in holding that notice and hearing are constitutional prerequisites to a lawful seizure.

II. The Court Below Erred in Holding That Pearson Suffered a Taking of Property Without Just Compensation.

Pearson alleged that the hearing Puerto Rico provides before forfeiture is not meaningful because the defense of innocence of the crime for which the vessel is forfeited is not provided by the statutes. The three-judge court treated this contention as raising the issue of taking without just compensation. As discussed below, the district court's conclusion is erroneous for a number of reasons. We observe initially, however, that analysis of the legality of forfeiture in terms of the Fifth Amendment's "just compensation" standard appears fundamentally unsound because no property is being taken "for public use" in the eminent domain

sense which is at the core of the just compensation requirement of the Fifth Amendment.[5]

Pearson Lacked Standing to Complain.

A. The constitutionality of the alleged failure of Puerto Rican law to allow the innocent third party defense in forfeiture proceedings is an issue that the district court should never even have reached. 34 L.P.R.A. § 1722(a) provides that an interested party has fifteen days in which to challenge a forfeiture if the courts are to have jurisdiction over his complaint. App. I, *infra,* p. 1a. It is well established that this period does not run against an interested party until *he himself* has been notified. *Garcia* v. *Superior Court,* 91 P.R.R. 146 (1964). In 1964 the Supreme Court of Puerto Rico said "we have no quarrel with the theory" of a plaintiff corporation seeking to contest a forfeiture on the grounds that notice was not properly served on it more than one year after notice had been served on its president. *Commonwealth* v. *Superior Court,* 96 P.R.R. 822, 824 (1969), n. 1 [translation from the Spanish text by Fernando E. Agrait-Betancourt, Assistant Secretary, Office of the Attorney General of the Commonwealth of Puerto Rico].

Pearson by its own admission had actual knowledge of seizure of the yacht by October 19, 1972, more than fifteen days before it filed its suit in federal district court. If actual notice satisfies the statutory requirements, then Pearson, like the plaintiff in *Commonwealth* v. *Superior Court, supra,* has lost its chance to air its third party defense through its own inaction.

Presumably this is the basis of the conclusion of the court below that Pearson is time-barred from the

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[5] *Armstrong* v. *United States* ,364 U.S. 40, 49 (1960); *United States* v. *Willow River Power Co.,* 324 U.S. 499, 502 (1945).

Puerto Rican courts. Jrsd. Stat., App. A, pp. 21-22. If, however, only notice according to the statutory formula will suffice, as *Garcia* v. *Superior Court, supra,* would indicate, then Pearson has not yet been notified and hence has not yet been barred from the court of Puerto Rico. On either interpretation, Pearson has suffered no damage as a result of the alleged failure of the Puerto Rican statute to satisfy the asserted just compensation standard. As Justice Brandeis said in his benchmark concurring opinion in *Ashwander* v. *T.V.A.,* 297 U.S. 288, 347-8 (1935):

> The Court will not pass upon the validity of a statute upon complaint of one who fails to show that he is injured by its operation.

The Commonwealth's Forfeiture Statute Does Not Violate the Fifth Amendment "Just Compensation" Requirement

B. The district court reasoned that if forfeiture statutes "are intended to impose a penalty only upon those who are significantly involved in a criminal enterprise," *Coin and Currency, supra,* at 721-2, it is a taking without just compensation to deny one having an interest in property seized, but lacking involvement in the crime for which the seizure was made, the right to preserve his interest against forfeiture by proof of his innocence. In support of this reasoning, the court offered one federal appellate decision and two federal district court decisions. The appellate decision, *McKeenhan* v. *United States,* 438 F.2d 739 (6th Cir. 1971), and one of the district court cases, *Suhomlin* v. *United States,* 345 F.Supp. 650 (D. Md. 1972), each held that the government was not entitled to forfeiture, given that it had dropped the criminal charges upon which the initial seizure has been made. Thus neither examined the status of the property interest of an innocent party when the possessor of the property seized

is in fact guilty of a criminal violation supporting forfeiture. The remaining district court decision, *United States* v. *One 1971 Ford Truck,* 346 F.Supp. 613 (C.D. Calif. 1972), does proclaim the principle sought to be supported, but only in dictum: the court held that the possessor of the truck was unlawfully in possession of it when apprehended and so, under a statutory exception, the innocent owner's interest could not be forfeited. *Id.* at 619-20. This same exception is judicially recognized in Puerto Rico. *Ochoteco* v. *Superior Court,* 88 D.P.R. 517, 88 P.R.R. 500 (1963). However, the unlawful possession involved in *One 1971 Ford Truck* is fundamentally different from the Lessee's contractual-consensual possession of the yacht in this case.

This Court has rejected in a long line of cases the principle announced by the court below. *Goldsmith Jr.-Grant Co.* v. *United States,* 254 U.S. 505 (1921); *Dobbin's Distillery* v. *United States,* 96 U.S. 395 (1878); *The Palmyra,* 25 U.S. (12 Wreat.) 1 (1827). On the strength of a single district court's dicta the court below belives that *Coin and Currency* overruled these cases. At least two circuit courts of appeal disagree flatly. *United States* v. *One 1971 Buick Riviera,* 463 F.2d 1168 (5th Cir. 1972); *United States* v. *One 1967 Ford Mustang,* 457 F.2d 931 (9th Cir. 1972). The latter makes the obvious point that such a decision should be made only by this Court or by the appropriate legislature. *Id.* at 932.

The desirability of the result reached by the district court is by no means self-evident. Of course it would be unjust for an owner to lose his vehicle as a result of a crime committed by one who has stolen it, because the owner bears no causal responsibility for the crime, did not in any way consent to the risk of its occurrence,

and cannot be made the medium of any deterrence of future occurrences by the imposition of a forfeiture upon him. No American jurisdiction permits forfeiture in these circumstances. But the owner who consents to the possession and use of his property by another presents a different case. He is a physical cause of the use of that property in a subsequent violation of law by the possessor. He is in a position to know of the risk, to discourage the possessor from committing the crime, and to protect himself against loss.[6]

In one of the decisions which the court below thinks has been overruled, this Court said that in enacting a forfeiture statute a legislature "interposes the care and responsibility of the owner of property which may be used to facilitate volations of law in aid of the prohibitions of the law and its punitive provisions. . . ." *Goldsmith, Jr.-Grant Co.* v. *United States,* 254 U.S. 505, 511 (1921). It is entirely consistent to interpose the owner's responsibility when he has consented to use of the property by another and to refuse to do so when use by another was against his will. Certainly it is a matter of the "severity of punishment," "its efficacy or its futility," matters which this Court has said to be "peculiarly questions of legislative policy." *Gore* v. *United States,* 357 U.S. 386, 393 (1958). Thus, the Commonwealth legislature should be entitled to make the policy determination that provision to law enforcement agencies of the power to seize and forfeit property (or property interests) of persons situated similarly to Pearson is necessary, or at least useful and convenient, to the conduct of vital government business.

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[6] Pearson is a paradigm example. See lease clauses 4(a), 4(c), 6. Jrsd. Stat., App. C, pp. 43, 44, 45.

If Allowance of the "Innocent Owner" Defense Against Forfeiture is Constitutionally Required, the District Court Nevertheless Erred in Construing the Puerto Rican Statutes as Denying Such Defense.

C. But if justice today insists on allowing the innocent third party defense against forfeiture, in the form sought by Pearson, this can and should be done short of striking down the Puerto Rican statutes as unconstitutional. There are already two standard exceptions to the long-standing rule that innocence will not save a third party's interest in the seized object, one exempting property used as a common carrier unless the owner or person in charge is a consenting party to the violation, the other exempting conveyances unlawfully in the possession of one other than the owner. *See, e.g.,* 21 U.S.C. §881(a), subparagraphs (A) and (B). In Puerto Rico these exceptions exist, as the district court remarked, *by virtue of judicial recognition.* Jrsd. Stat., App. A., p. 24, n. 12: *Metro Taxi Cabs, Inc.* v. *Treasurer,* 73 D.P.R. 171, 73 P.R.R. 164 (1952), and *Ochoteco* v. *Superior Court,* 88 D.P.R. 517, 88 P.R.R. 500 (1963).

The district court emphasized that the irrelevance to proceedings under Puerto Rican forfeiture statutes of the owner's innocence is "solely as a result of their interpretation by the Supreme Court of the Commonwealth of Puerto Rico." Jrsd. Stat., App. A, p. 24. The court continued:

> We cannot in fairness say that the result is the fault of the Supreme Court of the Commonwealth of Puerto Rico, for it, like many other courts, state and federal, was merely following the construction given the federal forfeiture statutes by the Supreme Court of the United States [before *Coin and Currency*]. *Ibid.*

The court below was, moreover, confident "that the Supreme Court of the Commonwealth of Puerto Rico

would have reached the same result as we do here today, in view of the fact that it has followed federal decisions in interpreting local forfeiture statutes." Jrsd. Stat., App. A, p. 21. But if the Puerto Rican Supreme Court were going to reach this result, it is doubtful that it would have done so by declaring the statutes unconstitutional. It is far more likely that the Puerto Rican Supreme Court would have recognized the innocence defense as a gloss on the statutes, just as it did with the other two innocence exceptions. *Metro Taxi Cabs, Inc.* v. *Treasurer, supra; Ochoteco* v. *Superior Court, supra.* Recently, the Arizona Supreme Court construed the Arizona vehicle forfeiture statute to permit proof of the owner's innocence of the crime, related to seizure, to defeat forfeiture of his property. *Re One 1965 Ford Mustang,* 105 Ariz. 293, 463 P.2d 827 (1970). This result was reached even though the court had no similar Arizona precedents for its interpretation.

The district court below plainly erred when it said "there is no conceivable way in which the Commonwealth courts can construe the challenged statutes 'to avoid the constitutional issues raised in this case.'" Jrsd. Stat., App. A, p. 21.

This Court has said:

> The cardinal principle of statutory construction is to save and not to destroy. * * * as between two possible interpretations of a statute, by one of which it would be unconstitutional and the other valid, our plain duty is to adopt that which saves the act. Even to avoid a serious doubt the rule is the same. (*N.L.R.B.* v. *Jones & Laughlin Steel Corp.,* 301 U.S. 130 (1936).)

In this case this principle should apply with special force, since the federal court elected not to abstain to

allow the Puerto Rican Supreme Court to construe and pass first on the constitutionality of local statutes.[7] *Fornaris* v. *Ridge Tool Co.*, 400 U.S. 41 (1970); *Reetz* v. *Bozanich*, 397 U.S. 82 (1970); *Bonet* v. *Texas Co.*, 308 U.S. 463, 471 (1940).

The District Court Erred in Holding Pearson had not Received Just Compensation for its Interest in the Seized Property.

D. Following its conclusion that the mechanics of the forfeiture statute of necessity would deprive Pearson of its property without just compensation, the court held Pearson "is entitled to be paid the amount of the appraisal, plus interest." Jrsd. Stat., App. A., p. 30. The district court cannot be basing its determination on what it would take to *justly* compensate Pearson. Despite the stipulation that Pearson was the "lawful owner" of the yacht and that it was and had been since its seizure in the possession of Commonwealth agents, there, nevertheless, is no evidence that Pearson suffered an injury for which compensation mandatorily should be held due. Clause 4(a) of the lease, which Pearson incorporated in its complaint, R. 8, 10, required Lessee to furnish Lessor with insurance policies with loss payable to Lessor "insuring Lessor against damage, loss, or destruction of the Equipment under this lease sustained in any manner whatsoever in an amount not less than the replacement value of said Equipment." Jrsd. Stat., App. C., p.

[7] Faithful adherence to the principle of preservative construction is indispensable to support that narrow limitation of the doctrine of abstention which this Court, on the grounds of duplication of effort and expense, has insisted upon. *England* v. *Bd. of Medical Examiners*, 375 U.S. 411 (1964). If state (or Commonwealth) officials cannot confidently expect adherence to this principle, they are remiss in their duties when they cooperate, as the Commonwealth did, in facilitating federal consideration of the constitutionality of local statutes.

43. The record contains no pleading, much less any evidence, and there is no reason to assume, that this insurance does not exist or did not fully compensate Pearson.

In addition, clause 4(c) provides that "the damage, destruction, loss, disability or *forfeiture* of said Equipment shall not discharge or diminish the obligation of Lessee to pay rent as provided in this agreement." Jrsd. Stat., App. C, p. 44. The agreement provided rental payments of $474.66 per month, which over the full lease term comes to considerably more than the "unit price" specified by Pearson—obviously reflecting an interest factor. Jrsd. Stat., App. C, P. 52. This sum became due no later than October 19, 1972, under clause 7, Jrsd. Stat., App. C, p. 45, thus "entitling" Pearson to an action in debt for that amount. This cause of action is the compensation properly evisaged by the lease in the event of forfeiture, and Pearson should be held to it.

If Pearson is entitled here to compensation, how could the case of any mortgagor, conditional vendor or other security interest holder be distinguished? If their interests are entitled to recognition and protection under the "just compensation" standard, the state's ability to obtain forfeiture of the property of those "significantly involved in a criminal enterprise" will be seriously undermined. It is common knowledge that a large percentage of all vessels, vehicles and airplanes in use today are subject to outstanding security interests held by third parties.

Finally, if Pearson is now badly placed to seek from Puerto Rico courts the relief it believes itself guaranteed by the federal Constitution, this is doubly due to its own negligence. Pearson knew—insisted on knowing—that the yacht would be based in Puerto Rico,

clauses 9, 12, Jrsd. Stat., App. C, pp, 47-48, but failed to register with Puerto Rico authorities the ownership interest which it claims, contrary to 23 L.P.R.A. § 451c. A mortgagee who fails to record his interest loses it to a good faith purchaser; Pearson deserves no greater protection when it fails to comply with a state's police measures. Pearson knew by October 19, 1972, that the yacht had been seized, but failed to act within the time provided by Puerto Rican law. This case should present no occasion to reward inattention to local law.

CONCLUSION

For the foregoing reasons, the decision of the court below should be reversed.

Respectfully submitted,

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November 16, 1973

APPENDIX 1

Statutes Involved

Section 512 of the Controlled Substances Act of Puerto Rico, 24 L.P.R.A. § 2512 (Supp. 1972) provides in pertinent part:

(a) The following shall be subject to forfeiture to the Commonwealth of Puerto Rico:

(4) All conveyances, including aircraft, vehicles, mount or vessels, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of property described in clauses (1) and (2) of this subsection;

(b) Any property subject to forfeiture under clause (4) of subsection (a) of this section shall be seized by process issued pursuant to Act No. 39 of June 4, 1936, as amended, known as the Uniform Vehicle, Mount, Vessel and Plane Seizure Act sections 1721 and 1722 of Title 34.

Section 2 of the Uniform Vehicle, Mount, Vessel and Plane Seizure Act, 34 L.P.R.A. § 1722, provides in pertinent part:

Whenever any vehicle, mount, or other vessel or plane is seized pursuant to the provisions of Act No. 6 of June 30, 1936, Act No. 220 of May 15, 1948, Act No. 32 of January 19, 1951, Act No. 48 of June 18, 1959 and/or Act No. 2 of January 30, 1956, such seizure shall be conducted as follows:

(a) The proceedings shall be begun by the seizure of the property by the Secretary of Justice, the Secretary of the Treasury or the Police Superintendent, through their delegates, policemen or other peace of-

APPENDIX

clauses 9, 12, Jvsd. Stat., App. C, pp. 47-48, but failed to register with Puerto Rico authorities the ownership interest which it claims, contrary to 23 L.P.R.A. § 451e. A mortgagee who fails to record his interest loses it to a good faith purchaser; Pearson deserves no greater protection when it fails to comply with a state's police measures. Pearson knew by October 19, 1972, that the yacht had been seized, but failed to act within the time provided by Puerto Rican law. This case should present no occasion to reward inattention to local law.

CONCLUSION

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>
> (a) The proceedings shall be begun by the seizure of the property by the Secretary of Justice, the Secretary of the Treasury or the Police Superintendent, through their delegates, policemen or other peace offi-

cers. The officer under whose authority the action is taken shall serve notice on the owner of the property seized or the person in charge thereof or any person having any known right or interested [sic] therein, of the seizure and of the properties so seized, said notice to be served in an authentic manner, within ten (10) days following such seizure and such notice shall be understood to have been served upon the mailing thereof with return receipt requested. The owners, persons in charge, and other persons having a known interest in the property so seized may challenge the confiscation within the fifteen (15) days following the service of the notice on them, through a complaint against the officer under whose authority the confiscation has been made, on whom notice shall be served, and which complaint shall be filed in the Part of the Superior Court corresponding to the place where the seizure was made and shall be heard without subjection to docket. All questions that may arise shall be decided and all other proceedings shall be conducted as in an ordinary civil action. Against the judgment entered no remedy shall lie other than a certiorari before the Supreme Court, limited to issues of law. The filing of such complaint within the period herein established shall be considered a jurisdictional prerequisite for the availing of the action herein authorized.

(b) Every vehicle, mount, or any vessel or plane so seized shall be appraised as soon as taken possession of by the officer under whose authority the seizure took place, or by his delegate, with the exception of motor vehicles, which shall be placed under the custody of the Office of Transportation of the Commonwealth of Puerto Rico, which shall appraise same immediately upon receipt thereof.

In the event of a judicial challenge of the seizure, the court shall, upon request of the plaintiff and after

hearing the parties, determine the reasonableness of the appraisal as an incident of the challenge.

Within ten (10) days after the filing of the challenge, the plaintiff shall have the right to give bond in favor of the Commonwealth of Puerto Rico before the pertinent court's clerk to the satisfaction of the court, for the amount of the assessed value of the seized property, which bond may be in legal tender, by certified check, hypothecary debentures, or by insurance companies. Upon the acceptance of the bond, the court shall direct that the property be returned to the owner thereof. In such case, the provisions of the following paragraphs (c), (d) and (e) shall not apply.

When bond is accepted the subsequent substitution of the seized property in lieu of the bond shall not be permitted, said bond to answer for the seizure if the lawfulness of the latter is upheld, and the court shall provide in the resolution issued to that effect, for the summary forfeiture execution of said bond by the clerk of the court and for the covering of such bond into the general funds of the Government of Puerto Rico in case it may be in legal tender or by certified check; the hypothecary debentures or debentures of insurance companies shall be transmitted by the pertinent clerk of the court to the Secretary of Justice for execution.

(c) After fifteen (15) days have elapsed since service of notice of the seizure without the person or persons with interest in the property seized have filed the corresponding challenge, or after twenty-five (25) days have elapsed since service of notice of the seizure without the court's having directed that the seized property be returned on account of the bond to that effect having been given, the officer under whose authority the seizure took place, the delegate thereof, or the Office of Transportation, as the case may be, may pro-

vide for the sale at auction of the seized property, or may set the same aside for official use of the Government of Puerto Rico. In case the seized property cannot be sold at auction or set aside for official use of the Government, the property may be destroyed by the officer in charge, setting forth in a minute which he shall draw up for the purpose, the description of the property, the reasons for its destruction and the date and place where it is destroyed, and he shall serve notice with a copy thereof on the Secretary of Justice.

(d) In case the vehicle, mount, or vessel or plane is sold at auction, the proceeds from the sale shall be covered into the general fund of the Government of Puerto Rico, after deducting and reimbursing expenses incurred.

(e) If the seizure is judicially challenged and the court declares same illegal, the Secretary of the Treasury of Puerto Rico shall, upon presentation of a certified copy of the final decision or judgment of the court, pay to the challenger the amount of the appraisal of the proceeds from the public auction sale of such property, whichever sum is the highest, plus interest thereon at the rate of 6% per annum, counting from the date of the seizure.

Sections 1, 3, and 4 of the Act of June 14, 1965, 23 L.P.R.A. § 451, 451b, 451c, provide in pertinent part:

§ 451. As used in this chapter, unless the context clearly implies a different meaning:

(e) "Owner" means a person other than a lien holder, having the property in or title to a motorboat. The term includes a person entitled to the use or possession of a motorboat subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation.

§ 451b. Every motorboat on the waters of the Commonwealth shall be numbered. No person shall operate or give permisson for the operation of any motorboat on such waters unless the motorboat is numbered in accordance with this chapter, or in accordance with applicable federal law, or in accordance with a federally approved numbering system of another state, and unless (1) the certificate of number awarded to such motorboat is in full force and effect, and (2) the identifying number set forth in the certificate of number is displayed on each side of the bow of such motorboat.

§ 451c. (a) The owner of each motorboat requiring numbering by this Commonwealth shall file an application for number with the Authority.

In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-157

ASTOL CALERO-TOLEDO, SUPERINTENDENT OF POLICE, EDGAR R. BALZAC, ADMINISTRATOR OF THE GENERAL SERVICES ADMINISTRATION OF THE COMMONWEALTH OF PUERTO RICO,
APPELLANTS,

v.

PEARSON YACHT LEASING CO., A DIVISION OF GRUMMAN ALLIED INDUSTRIES, INC.,
APPELLEE.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

APPELLEE'S BRIEF

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Blanchard Press, Inc., Boston, Mass. — Law Printers

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APPELLEE'S BRIEF

Opinion Below

This is an appeal from the Memorandum Opinion and Order of the United States District Court for the District

of Puerto Rico, sitting as a three-judge court, entered on March 29, 1973. The opinion of the court below, at 363 F. Supp. 1337, is printed in the Record Appendix at pages 29-40. Judgment was entered on June 15, 1973 and is also printed in the Record Appendix at pages 44-45.

Jurisdiction

Jurisdiction of this Court to review the decision of the district court is not contested.

Constitutional Amendments and Statutes Involved

The Fourth and Fifth Amendment of the United States Constitution, 24 LPRA Secs. 2512 (a) (4) and (b) (Supp. 1972) and 34 LPRA Secs. 1722 (a) to (e) are set forth in Appendix I hereto.

Questions Presented

1. Whether appellants are precluded from asserting on appeal defenses and points which were neither pleaded nor raised in the court below.
2. Whether seizure and forfeiture under state law of an innocent man's property without notice and prior hearing, and without judicial determination of culpability, is a violation of the due process requirement of the Constitution of the United States.
3. Whether forfeiture of property according to state law can constitutionally be upheld in the case where its owner is absolutely innocent and had no knowledge whatsoever that its property would be used in connection with an illegal activity.

Statement

This action was filed by Pearson Yacht Leasing Co., a division of Grumman Allied Industries Inc., hereinafter referred to as "Pearson", to seek redress for deprivation under color of state law, of rights secured by the Constitution of the United States. (R.A. p. 1-6) The purpose pursued was to recover possession of a vessel which had been leased to Donovan and Lorreta Olsen pursuant to a bareboat charter (R.A. p. 23-24, paragraph 7) and which had been seized by appellants some time before pursuant to the forfeiture provisions of the Controlled Substances Act of Puerto Rico, 24 LPRA Secs. 2102 to 2607. (R.A. p. 23). Since appellants had acted in accordance with State law, 24 LPRA Sec. 2512(a) (4) & (b) and 34 LPRA Sec. 1722, Appendix I, infra, injunctive as well as declaratory relief were requested.

A three-judge court was convened upon appellee's application (R.A. p. 20). Appellants had originally opposed said motion (R.A. p. 20) but after a hearing thereon (R.A. p. 21-22), withdrew their opposition and consented to the convening of such three-judge court. (R.A. p. 26 and p. 30).

Since the parties had stipulated those facts necessary for consideration of the constitutionality of the statutes, a hearing was held for the purpose of allowing the parties opportunity to present oral argument in support of their respective contentions. Upon conclusion of argument, the case was submitted to the consideration of the three-judge court.

The record is clear in that appellants did not contest below the substantiality of appellee's claim of its right to recover the yacht should it prevail. Nor did they bring to the district court's attention defenses, which they now claim should have been considered below. (Infra, p. ___, Argument: Part II). Now, they hope to defeat their own consent

to the district court's consideration of the constitutional issues by urging their consideration on appeal.

Because of the foregoing, appellee takes issue with appellants' assertion that "In effect, then Pearson sold the yacht to its 'lessee', retaining title until it had received full payment". (Appellants' Brief p. 4) This is a conclusionary statement which might have been drawn by the court below had it been timely raised.

Other than the above explanatory note no issue is taken with appellants' statement of chronological events below.

Argument

I. The Forfeiture Provision of the Controlled Substances Act of Puerto Rico Operates To Deprive Innocent Owners of Their Conveyances Without Due Process of Law and Without Compensation.

A. *Foreiture Without Culpability Constitutes A Taking Of Property Without Just Compensation.*

The Controlled Substances Act of Puerto Rico, 24 LPRA Secs. 2101-2607, provides that "All conveyances * * * which are used, or are intended for use * * * in proscribed transportation are "subject to forfeiture". 24 LPRA Sec. 2512 (a) (4). The statute incorporates the procedure established by the Uniform Vehicle, Mount, Vessel and Plane Seizure Act, 34 LPRA Secs. 1721 and 1722. 24 LPRA Sec. 2512(b). Neither of said statutes requires any proof or finding of culpability on the part of the owner of the forfeited property, nor is any provision made for compensation.

This Honorable Court in *United States* v. *United States Coin And Currency*, 401 U.S. 715 (1971) said:

> "When the forfeiture statutes are viewed in their entirety, it is manifest that they are intended to impose a penalty only upon those who are significantly involved in a criminal enterprise." 401 U.S. at 721-722.

That such intention is required to meet constitutional norms is manifest from the earlier statement in the same opinion " * * * this Court in the past has recognized the difficulty of reconciling the broad scope of traditional forfeiture doctrine with the requirements of the Fifth Amendment." 401 U.S. at 721.

In *United States* v. *United States Coin And Currency*, supra, the issue was not directly resolved due to " * * * the terms of the other statutes which regulate forfeiture proceedings", 401 U.S. at 721, and which provided for return of seized property to innocent petitioners. No such saving provision is included in the pertinent statutes of Puerto Rico.

The statutes here in question are facially unlimited. The only exceptions to their broad sweep have been judicially engrafted to protect the owner of property unlawfully deprived of its possession, *Ochoteco* v. *Superior Court*, 88 P.R. 500 (1963), and the owners of property used as a common carrier, *Metro Taxi Cabs, Inc.* v. *Treasurer*, 73 P.R.R. 164 (1952).[1] The innocent lessor of property used in proscribed activities, such as appellee herein, is subjected to the forfeiture provisions by express mandate of the highest judicial authority of Puerto Rico. *Commonwealth* v. *Superior Court*, 94 P.R.R. 687 (1967). The lack of significant involvement in a criminal enterprise is irrelevant in the forfeiture procedure of Puerto Rico, as interpreted and applied.

---

[1] These are the same exceptions included in the analogous federal statute. 21 USC Sec. 881(a) and (b).

In an effort to validate an apparently unconstitutional standard, appellants offer the hope of a limiting interpretation by the Supreme Court of Puerto Rico. In view of the legislative and judicial history of the statutes in question, such hope is not justified. The Uniform Vehicle, Mount, Vessel and Plane Seizure Act was enacted in Puerto Rico as Act No. 39 of June 4, 1960. 34 LPRA Secs. 1721 and 1722. This statute provides the procedural mechanism for forfeiture. In *Commonwealth* v. *Superior Court*, supra, the dissent questioned the constitutionality of that procedure. 94 P.R.R. at 695-773. On April 5, 1971, this Court rendered its decision in *United States* v. *United States Coin And Currency*, supra. Nevertheless, on June 21, 1971, the legislature of Puerto Rico enacted the Controlled Substances Act, 24 LPRA Secs. 2101-2607, and specifically incorporated the pre-existing procedure. As in the case of re-enactment or adoption of a statute, that incorporation is presumed to have included the prior judicial interpretations of the statute. *Vazquez* v. *Font*, 53 P.R.R. 252, 255 (1938); *Legarreta* v. *Treasurer*, 55 P.R.R. 20, 23 (1939). The legislature thus manifested its intent to include in the sweep of the statute the property of innocent lessor-owners. It is presumptuous to anticipate that the Supreme Court of Puerto Rico will now not only overrule its own decision, but will nullify the legislature's ratification of an authoritative interpretation of its intent. The constitutional protection of appellee, an admittedly innocent party, should not depend upon so tenuous a possibility.

Appellant's suggestion that the district court "elected not to abstain" in this case, Appellant's Brief at pp. 19-20, misinterprets the record. As indicated below, appellants consented to the convening of a three-judge court, R.A. 26, and did not invoke the doctrine of abstention as a defense in their answer, R.A. 27-29. Abstention would have been improper in the circumstances since the statutes in question

had already been authoritatively interpreted by the highest judicial authority of the Commonwealth. *Wisconsin* v. *Constantineau,* 400 U.S. 433 (1970); *Fornaris* v. *Ridge Tool Co.,* 400 U.S. 41 (1970); *Harman* v. *Forsseneius,* 380 U.S. 528 (1964); *Railroad Commission of Texas* v. *Pullman,* 312 U.S. 496 (1941). Even had the defense of abstention been raised below, appellee could not be forced to litigate federal constitutional issues in the Commonwealth courts. *England* v. *Louisiana State Board of Medical Examiners,* 375 U.S. 411 (1964).

The district court was bound by the interpretation of the statutes by the highest Commonwealth court. Since the statutes as so interpreted do not meet federal constitutional norms, there was no alternative to the invalidation of those statutes.

B. *Seizure Without Prior Hearing Is A Violation Of Due Process.*

In their effort to cure an additional infirmity of the statutes in question, appellants are forced to tortured interpretation both of the statutes and of decisions of this Court. Relying on *Downs* v. *Porrato,* 76 P.R.R. 572 (1954), appellants start with the premise that the "seizure" does not become a "forfeiture" until after a hearing, and then continue with the premise that there can be no "deprivation" until there is a "forfeiture". Thus they reach the conclusion that no hearing is required prior to seizure.

Downs v. *Porrato,* supra, rested on an interpretation of an analogous statute[2] at variance with the interpretation given to the statutes in question here by the same Supreme Court of Puerto Rico. In *Downs* it was said:

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[2] Weapons Act of Puerto Rico, as amended by Act No. 397 of May 10, 1951.

> "In the second case (that of a lawful instrument employed in unlawful pursuits) the confiscation has to be made by judicial declaration after proving (1) the unlawful use of a thing and (2) the knowledge of the interested parties of such unlawful use. The title does not pass to the State or to the person who acquires it in the judicial sale until there is a judicial declaration and the public auction has been accomplished." 76 P.R.R. at 578-579.

That statute, unlike the act here under consideration, permitted the defense of innocence of interested parties. The hearing in such case is meaningful. *Armstrong* v. *Monzo*, 380 U.S. 545 (1965); *Fuentes* v. *Shevin*, 407 U.S. 67 (1972). The district court in this case noted as "most compelling • • • the fact that under the statutory scheme, the available procedure precludes plaintiff from challenging the forfeiture in the state courts." R.A. 31-32. The reason given by the court below is the fact that appellee was time barred. R.A. 32, n. 4. An equally valid reason, as noted above, is that appellee's innocence would not constitute a defense as the statute has been interpreted and applied by the state courts.

Appellants also give an interpretation to the term "deprivation" different from that given by this Court. The argument is embodied in the statement:

> "And it is therefore impossible for the *seizure* of the yacht to have violated Pearson's rights under the due process clause."
>
> Appellants' Brief, p. 11. (emphasis in original).

The contention is that the district court's finding of deprivation from the date of seizure is erroneous. Appellants' Brief, P. 10. This contention is based on an interpretation

of "deprivation" as equivalent to "permanent taking". That interpretation was specifically rejected in *Fuentes* v. *Shevin*, supra.

> "While the length and consequent severity of a deprivation may be another factor to weigh in determining the appropriate form of hearing, it is not decisive of the basic right to a prior hearing of some kind." 407 U.S. at .

The possibility of recovery through a post-seizure hearing has not saved similar procedures in cases before this Court. *Fuentes* v. *Shevin*, 407 U.S. 67 (1972); *Goldberg* v. *Kelly*, 397 U.S. 254 (1970); *Armstrong* v. *Monzo*, 380 U.S. 545 (1965). Even that possibility did not exist here since appellee simply was accorded no defense to seizure and forfeiture.

The attempt to defend the statutory scheme by equating the seizure in the forfeiture proceeding to seizure under a search warrant is treated below. However, the suggestion that seizure without notice is essential to law enforcement requires analysis. As the court below pointed out, the seizure of the yacht in this case took place on July 11, 1972, while the act for which it was forfeited took place on May 6, 1972. R.A. p. 38. The relationship between the seizure and law enforcement is difficult to understand in these circumstances. This is not the case of a search and seizure immediately contemporaneous with an arrest, as in *Chambers* v. *Maroney*, 399 U.S. 42 (1970). As the Court stated the norm there:

> "For constitutional purposes, we see no difference between on the one hand seizing and holding a car before presenting the probable cause issue to a magistrate and on the other hand carrying out an immediate

search without a warrant. Given probable cause to search, either course is reasonable under the Fourth Amendment." 399 U.S. at 52.

In the case at bar, neither alternative was followed since the seizure was not incidental to a search based on probable cause for the purpose of uncovering evidence. The "exigent circumstances" which might serve as a sufficient authorization for a search based on the judgment of the police as to probable cause, *Chambers* v. *Maroney*, supra, 399 U.S. at 51, did not exist on July 11, 1972, when seizure was effected. The purpose of seizure here was solely for forfeiture at the time it was effected, and no law enforcement objective existed.

In neither *United States* v. *Troiano*, 365 F.2d 416 (3 Cir. 1966), *certiorari denied* 385 U.S. 958 (1966); nor in *Burge* v. *United States*, 342 U.S. 408 (9 Cir. 1965), *certiorari denied* 382 U.S. 829 (1965), cited by appellants, was the issue of seizure and forfeiture the point of decision. In both cases objection was raised to admission of the fruits of a search in the criminal trial of the defendant. In both cases the seizure was contemporaneous with the arrest. While it is true that in *Burge*, supra, the search occurred some seven days after the seizure, the Court of Appeals found the search reasonable since the vehicle was in the lawful custody of the United States from the time of seizure until the search. 342 F.2d at 414.

The issue here is whether the seizure was permissible. The probable cause requirement plays no part in that determination in the circumstances of this case since none of the justifying conditions for action without a warrant or other legal process existed. *Chambers* v. *Maroney*, supra, 399 U.S. at 51. Nor was this one of the truly unusual situations in which this Court has allowed outright seizure without opportunity for a prior hearing. *Fuentes* v. *Shevin*, supra, 407 U.S. at 90-92.

C. *Seizure Without Prior Determination Of Probable Cause Is Violative Of The Fourth Amendment.*

In their attempt to avoid the requirement of a prior hearing, appellants argue that the "probable cause" requirement of the Fourth Amendment is applicable to seizures in forfeiture proceedings. Appellants' Brief, p. 12. This contention was neither raised nor considered in the court below, and therefore should not be considered on appeal. Point II, infra. The factual record is insufficient to show that the Fourth Amendment standards which they contend are controlling were in fact met in this case by appellants. The burden is on those who seek exemption from the constitutional mandate to show that the exigencies of the situation made the course followed imperative. *McDonald* v. *United States,* 335 U.S. 451, 456 (1948).

The argument fails on this record. The reasoning is based on the assumption that once an officer of the law has "probable cause", arrest, seizure and search follow without more. That is not the rule as formulated by this Court.

Appellants have not met the standard which they now set for themselves. Assuming that the "probable cause" requirement for seizure is the same as for search, " • • • searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions." *Katz* v. *United States,* 389 U.S. 347, 357 (1967). There is no suggestion of approval by a judge or magistrate in this case, and the statutes in question provide for none. The "high government official" (Appellants' Brief, p. 12) who authorized seizure was the Police Superintendent. R.A. 23. The procedure is fundamentally indistinguishable from that found constitutionally inadequate in *Coolidge* v. *New Hampshire,* 403 U.S. 443, 450 (1971).

A search without a warrant can be justified as an incident of an arrest, but such search can extend only to the arrestee's person and the area within his immediate control —construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence. *Chimel* v. *California*, 395 U.S. 752, 763 (1969). The justifications for the rule allowing contemporaneous searches are absent where the search is remote in time or place from the arrest. *Preston* v. *United States*, 376 U.S. 364, 367 (1964). The "plain view" doctrine which permits a warrantless seizure is limited to cases where it is immediately apparent to the police that they have evidence before them. The doctrine may not be used to extend a general exploratory search (and seizure) from one object to another until something incriminating at last emerges, and is grounded on an otherwise lawful search in progress. *Coolidge* v. *New Hampshire*, supra, 403 U.S. at 466-467. It is true that a search of a ship, motor boat, wagon, or automobile for contraband goods is permitted where it is not practicable to secure a warrant, because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought. *Carroll* v. *United States*, 267 U.S. 132, 153 (1925). However, the record here is barren of any indication of such purpose, and on the contrary, indicates the seizure was for the purpose of forfeiture alone.

This Court has recently reaffirmed the principle that no amount of probable cause can justify a warrantless search or seizure absent "exigent circumstances." *Coolidge* v. *New Hampshire*, supra, 403 U.S. at 468. Appellants argue that the "probable cause" doctrine is applicable to the present seizure. The burden is upon them to establish the exigent circumstances constituting an exception to the general principle. No effort to discharge that burden was made in the court below, appellants having rested there on the facial constitutionality of the statutes under consider-

ation. The statutes do not require, and the Supreme Court of Puerto Rico has not imposed, a requirement of probable cause as mandated by the Fourth Amendment. The determination by officers other than judges or magistrates, even if made, is constitutionally inadequate. Under the interpretation most favorable to them, appellants cannot legalize the present seizure. Since this seizure is permitted by statute, the statutes are overly broad and invalid.[3]

The result is the same whether the Fourth Amendment or the Fifth Amendment is applied, and the holding of the court below was correct.

II. There Is No Evidence On The Record Upon Which To Consider On Appeal Defenses Not Raised Below.

Appellants assert on appeal certain defenses and issues which were never pleaded or raised in the court below. Error is charged by them on the grounds that the district court should have considered such defenses and issues in order to avoid reaching the constitutional issues. The matters now asserted are:

(a) That the "probable cause" requirement of the Fourth Amendment rather than the prior hearing requirement of the due process clause is applicable to seizures in forfeiture proceedings: (Appellants' Brief, p. 12).

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[3] The record of this case, contrary to appellants' footnote 4 at page 12 of their brief, establishes only that the lessee of the seized yacht was accused of using the yacht some two months prior to seizure for conveying, transporting, carrying and transferring a narcotic drug known as "marijuana". R.A. 25. There is no evidence on the record of such use, or any other unlawful use on the date of seizure which would justify a finding of probable cause. The marihuana was discovered on the yacht on May 6, 1972, and the record discloses no violation other than possession. Appellants' Brief, p. 4.

(b) That Pearson lacked "standing" to complain because under Section 1722 it is time barred. (Appellants' Brief, p. 14-15).

(c) That Pearson suffered no injury or loss which must be compensated. (Appellants' Brief, p. 20).

(d) That Pearson has suffered no loss because there might be hull insurance covering the loss. (Appellants' Brief, p. 20).

(e) That Pearson is limited to seeking only those remedies afforded under contract. (Appellants' Brief, p. 21).

(f) That Pearson's loss was due to its negligence in failing to register its title with the Ports Authority of Puerto Rico. (Appellants' Brief, p. 21).

Except for the first point listed, which involves a question of law and is discussed in Part I (C) of appellee's Argument, supra, p. 11, 12; the matters involved depend on facts and circumstances not before this Court. No presentation was made or attempted of those facts in the court below. This absence of facts and evidence necessary for judicial adjudication of the issues is due solely and exclusively to appellants' failure to timely raise the points and make such offer of proof as may have been required. This failure prevented the district court from considering the points now urged on appeal and from making adequate findings of fact and conclusions based thereon, so essential to their consideration on appeal. The record on appeal, therefore, lacks the elements needed by this Court in order to examine the error alleged, particularly those in

parts II (A) and (D) of appellants' argument. Appellants Brief pp. 14-15 and 20-22.

Sufficient opportunity existed below to preserve those matters for appeal by means of an adequate record. Appellants do not contend having been denied that opportunity. Neither do they claim to have been prevented from presenting those points by arbitrary, capricious or improper conduct of the trial judges. The record only discloses that the points and issues were simply not raised below nor relied on.

The assertions of these defenses for the first time on appeal comes as a complete surprise to appellee. Assuming, *arguendo*, their merit; at this stage, it is not possible for this Court to adjudicate those issues without a full evidentiary hearing in which evidence may be adduced by the parties in support of their respective contentions. Appellants' argument takes for granted, by assumption naturally, that the record includes the evidence and findings and conclusion of a trial court necessary for consideration of the point urged on appeal. It would indeed be disadvantageous to the appellee if this court were to consider those points, without affording an opportunity to explain or rebut by proof or otherwise, such things as the fact that an injury and loss occurred, that hull insurance does not cover forfeitures, that no adequate contractual remedy exists, especially since the primary security was the vessel itself, or that the failure to register was not negligence in this case because of the customs and usages of maritime commerce of not registering bareboat charters such as this one. Trial by argument on appeal is not a substitute for trial on the merits in the fact finding tribunal.

This Court, in *Hormel* v. *Helvering*, 312 U.S. 552, (1941),

expressed the rule as to review of issues not raised below:

> "Ordinarily an appellate court does not give consideration to issues not raised below. For our procedural scheme contemplates that parties shall come to issue in the trial forum vested with authority to determine questions of fact. This is essential in order that parties may have the opportunity to offer all evidence they believe relevant to the issues which the trial tribunal is alone competent to decide; it is equally essential in order that litigants may not be surprised on appeal by final decisions there of issues upon which they have had no opportunity to introduce evidence". 312 U.S. at 556.

This rule has been subsequently applied in *United States* v. *New York Telephone Co.*, 326 U.S. 638, 650-651, n. 18 (1946); *Estate of Donelly*, 397 U.S. 286, 295, n. 5 (1970).

The principle is of even greater applicability in a case such as this where governmental action has deprived an individual of property whose value has been stipulated to be $19,800. The reasonableness, if any, of appellants' action depends on the facts, and it was precisely the position adopted by appellants in the fact finding forum that precluded introduction of evidence and findings of fact on which to base their untimely arguments here.

Appellants may not now blame the district court for their own failure.

Conclusion

The constitutionality of the statutes involved was correctly decided by the district court according to the principles underlying the decisions of *United States* v. *United*

States Coin and Currency, supra, and *Fuentes* v. *Shevin,* supra. The decision of the court below should, therefore, be affirmed.

Respectfully submitted,

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APPENDIX I

United States Constitution

AMENDMENT IV—SEARCHES AND SEIZURES

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V—CAPITAL CRIMES; DOUBLE JEOPARDY; SELF-INCRIMINATION; DUE PROCESS; JUST COMPENSATION FOR PROPERTY

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

24 L.P.R.A. § 2512. Forfeitures

(a) The following shall be subject to forfeiture to the Commonwealth of Puerto Rico:

> (4) All conveyances, including aircraft, vehicles, mount or vessels, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of property described in clauses (1) and (2) of this subsection;

(b) Any property subject to forfeiture under clause (4) of subsection (a) of this section shall be seized by process issued pursuant to Act No. 39, of June 4, 1960, as amended, known as the Uniform Vehicle, Mount, Vessel and Plane Seizure Act, sections 1721 and 1722 of Title 34.

34 L.P.R.A. § 1721. Short title

This chapter shall be known as the "Uniform Vehicle, Mount, Vessel and Plane Seizure Act."—June 4, 1960, No. 39, p. 66, § 1, eff. June 4, 1960.

§ 1722. Procedure

Whenever any vehicle, mount, or other vessel or plane is seized pursuant to the provisions of Act No. 6 of June 30, 1936, Act No. 220 of May 15, 1948, Act No. 17 of January 19, 1951, Act No. 48 of June 18, 1959 and/or Act No. 2 of January 20, 1956, such seizure shall be conducted as follows:

(a) The proceedings shall be begun by the seizure of the property by the Secretary of Justice, the Secretary of the Treasury or the Police Superintendent, through their delegates, policemen or other peace officers. The officer under whose authority the action is taken shall serve notice on the owner of the property seized or the person in charge thereof or any person having any known right or interest therein, of the seizure and of the appraisal of the properties so seized, said notice to be served in an authentic manner, within ten (10) days following such seizure and such notice shall be understood to have been served upon the mailing thereof with return receipt requested. The owners, persons in charge, and other persons having a known interest in the property so seized may challenge the confiscation within the fifteen (15) days following the service of the notice on them, through a complaint against the officer under whose authority the confiscation has been made, on

whom notice shall be served, and which complaint shall be filed in the Part of the Superior Court corresponding to the place where the seizure was made and shall be heard without subjection to docket. All questions that may arise shall be decided and all other proceedings shall be conducted as in an ordinary civil action. Against the judgment entered no remedy shall lie other than a certiorari before the Supreme Court, limited to issues of law. The filing of such complaint within the period herein established shall be considered a jurisdictional prerequisite for the availing of the action herein authorized.

(b) Every vehicle, mount, or any vessel or plane so seized shall be appraised as soon as taken possession of by the officer under whose authority the seizure took place, or by his delegate, with the exception of motor vehicles, which shall be placed under the custody of the Office of Transportation of the Commonwealth of Puerto Rico, which shall appraise same immediately upon receipt thereof.

In the event of a judicial challenge of the seizure, the court shall, upon request of the plaintiff and after hearing the parties, determine the reasonableness of the appraisal as an incident of the challenge.

Within ten (10) days after the filing of the challenge, the plaintiff shall have the right to give bond in favor of the Commonwealth of Puerto Rico before the pertinent court's clerk to the satisfaction of the court, for the amount of the assessed value of the seized property, which bond may be in legal tender, by certified check, hypothecary debentures, or by insurance companies. Upon the acceptance of the bond, the court shall direct that the property be returned to the owner thereof. In such case, the provisions of the following paragraphs (c), (d) and (e) shall not apply.

When bond is accepted the subsequent substitution of

the seized property in lieu of the bond shall not be permitted, said bond to answer for the seizure if the lawfulness of the latter is upheld, and the court shall provide in the resolution issued to that effect, for the summary forfeiture execution of said bond by the clerk of the court and for the covering of such bond into the general funds of the Government of Puerto Rico in case it may be in legal tender or by certified check; the hypothecary debentures or debentures of insurance companies shall be transmitted by the pertinent clerk of the court to the Secretary of Justice for execution.

(c) After fifteen (15) days have elapsed since service of notice of the seizure without the person or persons with interest in the property seized have filed the corresponding challenge, or after twenty-five (25) days have elapsed since service of notice of the seizure without the court's having directed that the seized property be returned on account of the bond to that effect having been given, the officer under whose authority the seizure took place, the delegate thereof, or the Office of Transportation, as the case may be, may provide for the sale at auction of the seized property, or may set the same aside for official use of the Government of Puerto Rico. In case the seized property cannot be sold at auction or set aside for official use of the Government, the property may be destroyed by the officer in charge, setting forth in a minute which he shall draw up for the purpose, the description of the property, the reasons for its destruction and the date and place where it is destroyed, and he shall serve notice with a copy thereof on the Secretary of Justice.

(d) In case the vehicle, mount, or vessel or plane is sold at auction, the proceeds from the sale shall be covered into the general fund of the Government of Puerto Rico, after deducting and reimbursing expenses incurred.

(e) If the seizure is judicially challenged and the court

declares same illegal, the Secretary of the Treasury of Puerto Rico shall, upon presentation of a certified copy of the final decision or judgment of the court, pay to the challenger the amount of the appraisal or the proceeds from the public auction sale of such property, whichever sum is the highest, plus interest thereon at the rate of 6% per annum, counting from the date of the seizure.—June 4, 1960, No. 39, p. 66, § 2; Sept. 1, 1961, No. 10, p. 348, § 1, eff. Sept. 1, 1961.

No. 73-157

In the Supreme Court of the United States

OCTOBER TERM, 1973

ASTOL CALERO-TOLEDO, SUPERINTENDENT OF POLICE, ET AL., APPELLANTS

v.

PEARSON YACHT LEASING COMPANY

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTIONS PRESENTED

The United States will discuss the following questions:

1. Whether a statute authorizing seizure without a prior adversary hearing (but with an opportunity for a prompt post-seizure hearing) of property that is subject to forfeiture because of its use for unlawful purposes is unconstitutional on its face under the Fifth Amendment.

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2. Whether the forfeiture of a vehicle or vessel used by a lessee for an unlawful purpose deprives the owner of property without due process or constitutes a taking without just compensation, where the owner was not a participant in and did not know of the unlawful use to which it was put.

INTEREST OF THE UNITED STATES

The district court has held unconstitutional a Puerto Rican statute providing for forfeiture of vehicles or vessels used for unlawful purposes by one in lawful possession thereof. It found two defects in the statute: (1) Its failure to provide notice and an adversary hearing prior to seizure; and (2) its authorization of forfeiture when the owner-lessor was neither aware of nor involved in the unlawful act resulting in the forfeiture.

Like most state legislatures, Congress has, beginning in 1789, enacted a considerable number and variety of laws providing for seizure and forfeiture; these are similar to the Puerto Rican statutes in various respects. Such laws provide an important tool in the collection of revenue, control of imports, regulation of firearms, gambling, and drug abuse, and other federal law enforcement purposes. Government policy and programs in such areas have been developed in light of the long history of such forfeiture laws and the numerous decisions of this Court sustaining their validity. *E.g.*, H. Rep. No. 1054, 76th Cong., 1st Sess., p. 3. Because this Court's decision concerning the constitutionality of the Puerto Rican statutes could have an important bearing on the validity and

application of the various federal forfeiture statutes, the United States has a substantial interest in the outcome of this case. A representative collection of federal forfeiture statutes that could be affected by the Court's decision in this case is set forth in the appendix to this brief, *infra*.

STATEMENT

We add only the following to the statement of the case in the appellants' brief. Under the lease between the appellee, Pearson Yacht Leasing Company, and the lessees of the boat, the latter were to use the yacht only for "any and all legal purposes" (App. 10),[1] to obtain insurance for Pearson against "loss" of the yacht "sustained in any manner whatsoever" (App. 8), and to assume all liability for and save Pearson harmless from "all loss imposed by law resulting from the use or operation" of the yacht (App. 9). The lease also provided that "forfeiture" of the yacht was not to diminish or discharge the obligation of the lessees to pay rent (App. 9) and that, except upon the written consent of Pearson, the yacht was to be based at the home port of the lessees, specified as a Puerto Rican address (App. 12, 14).

After the lessees had defaulted on the lease agreement, Pearson learned of the seizure, resulting from the discovery of marijuana on board, on October 19, 1972, when Pearson alleges that it unsuccessfully attempted, in a manner not disclosed by the record, to regain possession of the vessel from the lessees (App. 3; see

[1] "App." refers to appellants' separately printed appendix.

App. 10, 28). Pearson did not thereafter file suit in Superior Court as provided in 34 L.P.R.A. 1722(a) (Br. App. 1a).[2] Rather, on November 6, 1972—more than fifteen days later—Pearson filed suit in the United States District Court for the District of Puerto Rico under 28 U.S.C. 1343, seeking to compel the return of the yacht, to have 24 L.P.R.A. (Cum. Supp. 1972) 2512(a)(4) and (b) and 34 L.P.R.A. 1722 declared unconstitutional as applied to Pearson, and to enjoin enforcement of these statutes against its property. Pearson claimed that the statutes were unconstitutional because they did not require that notice be given to the owner of seized property and because they authorized forfeiture of property of "an innocent party to the criminal act for which the property was seized and subject to forfeiture" (App. 4–5). On Pearson's motion a three-judge court was convened, in accordance with 28 U.S.C. 2281.

The three-judge district court made two basic findings.[3] The court held that the failure of the forfeiture statute to provide for a hearing prior to seizure was inconsistent with due process under principles enunciated in this Court's decision in *Fuentes* v. *Shevin*, 407 U.S. 67 (App. 36–39). (The court, however, did not specify the issues to be considered at such a pre-

[2] "Br. App." refers to the appendix included in appellants' brief. "Br." refers to appellants' brief.

[3] The court considered it unnecessary to reach the question whether failure to provide proper notice to the owner before forfeiture may violate due process standards, because it determined that, "[f]rom the record in this case, we are not disposed to rule that the Commonwealth of Puerto Rico did not have reason to believe that notice to the owner was, in fact, given" (App. 36).

seizure hearing.) In addition, insofar as the challenged statutes authorized the forfeiture of property "of a totally innocent person" in Pearson's situation, the court held that they took property without just compensation in violation of the Constitution[4] and of what it understood to be the teachings of *United States* v. *United States Coin & Currency*, 401 U.S. 715 (App. 35–36). Accordingly, the court declared 24 L.P.R.A. 2512(a)(4) and 34 L.P.R.A. 1722(a) unconstitutional and issued a permanent injunction against the enforcement of the challenged provisions (App. 39, 45). The court also found that, by virtue of its holding, Pearson would be entitled to be paid the appraised value of the vessel at the time of its seizure ($19,800; App. 28) plus 6 percent interest per annum under 34 L.P.R.A. 1722(d), which authorizes such damages for a person aggrieved by an illegal seizure (App. 40).

In addition to the facts established by the stipulated record in this case, there are a number of possibly pertinent factual matters not covered by the record. Thus, the record does not reveal the extent to which, if at all, Pearson either had, sought, or should have known information about the background or any possible criminal record of the lessees. It is also not clear whether

[4] The statutes were challenged as violating the Fifth and Fourteenth Amendments (App. 5), but the court did not specify which it relied upon. Compare *Fornaris* v. *Ridge Tool Co.*, 400 U.S. 41. It has been held that, to the extent that the Constitution applies directly to the laws of Puerto Rico, they are subject to the Fifth Amendment. *Arroyo* v. *Puerto Rico Transp. Auth'y*, 164 F.2d 748, 750 (C.A. 1). But see *Balzac* v. *Porto Rico*, 258 U.S. 298, 304–305; *Stagg, Mather & Hough* v. *Descartes*, 244 F.2d 578, 582–583 (C.A. 1). See also 48 U.S.C. 731d, 737.

the lessees were arrested at the time the marijuana was discovered on the vessel on May 6, 1972, or whether the police had a warrant or probable cause to arrest or to search or seize the vessel or anything in it at that time. The status or location of the vessel between that date and its seizure on July 11, 1972, is not disclosed by the record, nor is the reason for the timing of the seizure. The record does not establish when the appellants first learned of Pearson's existence or relationship to the seized vessel. Finally, it is not known whether Pearson has sought to pursue its remedies against the lessees under the lease, whether it intends to do so, or whether such remedies would be likely to make Pearson whole.[5]

INTRODUCTION AND SUMMARY OF ARGUMENT

1. Forfeiture statutes are important and effective tools in law enforcement and regulation. While the ancient conceptual basis for forfeitures may lack contemporary vitality, forfeitures have in recent history come to serve a variety of important governmental purposes in connection with such diverse matters as revenue collection, import control, and the regulation of firearms, liquor, and drug abuse. Statutes authorizing seizure and forfeiture generally represent an alternative or supplemental sanction and means of deterrence of violations of the criminal laws.

Moreover, by removing from circulation property that has been used—and may again be used—in viola-

[5] While these facts are perhaps not essential for evaluation of the facial validity of the statute, a determination of its unconstitutionality as applied to Pearson could not properly be made without considering these matters.

tion of the law, forfeiture provisions foster the purposes of the underlying prohibitions or regulations.[6] Thus, the further use of a vehicle or vessel for illicit transportation was a danger Congress recognized from past experience and specifically sought to prevent when, in 1939, it enacted 49 U.S.C. 781 (App., *infra*, p. 51), which the district court found (App. 34, n. 12) to be the model for the Puerto Rican forfeiture law.[7]

[6] For example, the liquor prohibition statute (41 Stat. 315), from which evolved the present general internal revenue forfeiture statute (26 U.S.C. 7302 (App., *infra*, p. 50)), was designed to remove from circulation both liquor and property used in its manufacture, without regard to criminal conviction of the offender. Had it been possible to seize and destroy all liquor and the property used to make it, the prohibition laws would have been effective even if no offender were ever actually convicted.

[7] The committee reports stated:

"The importance of this type of forfeiture laws is indicated by the fact that it has been the tendency of Congress in recent years to enlarge and increase the laws relating to the forfeiture of vessels, vehicles, and aircraft. Thus, the act of June 19, 1934 (48 Stat. 1116), amended section 938 of the Revised Statutes to make discretionary with the courts the former mandatory provisions for the release under bond of vessels seized for violations of the customs laws pending judicial proceedings looking toward forfeiture. This amendment was made necessary by the fact that vessels seized for violations of the customs laws and released on bond frequently returned immediately to the smuggling traffic. Instances were not uncommon of vessels being seized three or four times for different violations and being released on bond each time before the first forfeiture proceeding came up for trial. * * *

"The present legislation is necessary because there are no laws which subject to forfeiture vessels, vehicles, and aircraft employed to facilitate violations of the counterfeiting laws or the National Firearms Act and because the statutory provisions for forfeiting vessels, vehicles, and aircraft used to facilitate vio-

In addition to preventing further illicit use of a conveyance, seizure and forfeiture provide a means of imposing an economic penalty against those who use conveyances to break the law, thereby making law-breaking unprofitable.[8] Seizure and forfeiture statutes also help to compensate the government for the cost of apprehending law violators or otherwise administering its regulatory programs, and provide a method of obtaining security for debts, penalties and fines owed to the government. See *Helvering* v. *Mitchell,* 303 U.S. 391, 400–401; *One Lot Emerald Cut Stones* v. *United States,* 409 U.S. 232, 237.

2. In authorizing seizure of property subject to forfeiture without prior notice or adversary hearing, the

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lations of the narcotic laws are entirely inadequate. It is made doubly necessary, because not infrequently the means of transportation employed in violations of the laws involved in the present bill are peculiarly adapted to such type of work as, for instance, high-speed powerboats, fast cars with secret compartments, and aircraft. If such means of transportation are not forfeited, they will be readily available for future violations. * * *" (H. Rep. No. 1054, *supra*, at pp. 2–3; S. Rep. No. 926, 76th Cong., 1st Sess., p. 2.)

[8] As Congress has repeatedly stated in enacting forfeiture provisions:

"It has been the experience of our enforcement officers that the best way to strike at commercialized crime is through the pocketbooks of the criminals who engage in it. By decreasing the profits which make illicit activity of this type possible, crime itself can also be decreased. Vessels, vehicles, and aircraft may be termed the 'operating tools' of dope peddlers, counterfeiters, and gangsters. They represent tangible major capital investments to criminals whose liquid assets, if any, are frequently not accessible to the Government." (H. Rep. No. 1054, *supra*, at p. 2; S. Rep. 926, 76th Cong., 1st Sess., p. 2. See also H. Rep. No. 2751, 81st Cong., 2d Sess., p. 3; S. Rep. No. 1755, 81st Cong., 2d Sess., p. 3.)

Puerto Rican forfeiture statutes involved in this case are similar to virtually every other federal and state forfeiture statute. The district court's holding that the Constitution requires prior notice and a hearing before forfeitable property may be seized is an erroneous extension of this Court's decision in *Fuentes* v. *Shevin*, 407 U.S. 67. Seizure pursuant to a forfeiture statute does not come within the rationale of *Fuentes* because such statutes do not abdicate state control over state power or permit private parties to serve their private interests by unilaterally invoking state power; a state official participates in the decision to make the seizure and evaluates the need for it. In addition, a seizure for forfeiture is very similar to an evidentiary seizure pursuant to a warrant and may properly be comprehended within the exception recognized in *Fuentes* for such seizures.

Pre-hearing seizure of forfeitable property was recently upheld by this Court in *United States* v. *Thirty-Seven (37) Photographs*, 402 U.S. 363. Any requirement of prompt post-seizure judicial proceedings established by that decision would be satisfied by the Puerto Rican statute, assuming such requirements are applicable when the seized property is not arguably protected by the First Amendment.

In any event, Pearson, as a lessor, had no right to immediate possession of the vessel when it was seized, and it thus has no standing to claim that the seizure deprived it of property without due process of law.

3. Forfeiture statutes vary in their treatment of the relationship of the owner of the property to the act

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resulting in forfeiture. In some instances a claim of "innocence" by the owner is impossible because the legislature has made ownership or possession of the type of property involved unlawful or has provided that no private property rights may exist in such property. Even where the forfeitable status of property derives from its use in a particular manner rather than its intrinsic character, the relevance of the owner's relationship to the use resulting in the forfeiture may depend upon the circumstances.

Where the owner is wholly incapable of preventing its unlawful use, as where the property was improperly used by one who stole it or whose possession of it was otherwise unlawful or unauthorized, most statutes either explicitly or by construction would not require forfeiture. However, where the improper use was made by one to whom the owner had entrusted the property (*e.g.*, lessee, bailee, conditional vendee), the statutes vary. Some would not require forfeiture if the owner had no knowledge of or involvement in the forfeiting act, whereas others contain no such exemption, thereby in effect imposing strict liability on the owner. The Puerto Rican statute and many federal forfeiture statutes are in the latter category.

Such imposition of strict liability on the owner furthers the basic purposes served by forfeiture statutes by obliging property owners to take greater care in deciding to whom they will entrust their property and by causing them to take added precautions against its improper use. As a reasonable means of achieving a legitimate end, the application of forfeiture statutes

in such circumstances does not result in a deprivation of property without due process or a taking of private property for public use without just compensation. Accordingly, their constitutionality has been repeatedly sustained by this Court.

The district court erroneously concluded that the prior decisions concerning the constitutionality of forfeiture statutes as applied to the property of one in Pearson's situation had been overruled by this Court's decision in *United States* v. *United States Coin & Currency,* 401 U.S. 715. The issue presented here was not before the Court in *Coin & Currency* and the Court expressly disavowed any reconsideration of its prior decisions on the subject. Nothing said in *Coin & Currency* or in any other decision of this Court undermines the continuing vitality of this Court's long line of decisions demonstrating the validity of the application of the Puerto Rican forfeiture statute in the present case.

Any potential constitutional problems arising from the application of a forfeiture statute to the property of an "innocent" owner in Pearson's position are eliminated where there exists a judicial or administrative procedure for remission or mitigation of forfeitures. Such procedures exist with respect to nearly all federal forfeiture statutes, although they are apparently not available under the Puerto Rican forfeiture statute. However, we do not believe that the availability of such procedures is essential to the validity of the statute, and this Court's prior decisions have not rested on such a basis.

Finally, we submit that Pearson is not in a position to assert a deprivation of property by the operation of the forfeiture statute. Under the lease agreement, Pearson has remedies against the lessee which, if pursued, would fully recompense it for the value of the vessel. The real impact of the forfeiture is on the lessees. If the forfeiture were not sustained, however, the lessees would be relieved of a legislatively imposed consequence of their wrongdoing, and the purposes of the forfeiture statute would be disserved.

ARGUMENT

I. DUE PROCESS DOES NOT REQUIRE AN ADVERSARY HEARING PRIOR TO SEIZURE OF PROPERTY SUBJECT TO FORFEITURE FOR HAVING BEEN USED IN THE COMMISSION OF AN ILLEGAL ACT

A. THE PROCEDURAL SETTING OF SEIZURES OF FORFEITABLE PROPERTY

The Puerto Rican forfeiture statute, like most forfeiture statutes enacted by Congress or by the states, provides, as the first step toward forfeiture, that the property subject to forfeiture be seized prior to the judicial forfeiture proceedings. Particular procedures and standards relating to different aspects of the forfeiture process vary among the Puerto Rican and the various federal forfeiture statutes.

1. Initial authorization of seizure

The Puerto Rican statute, based on the Uniform Vehicle, Mount, Vessel and Plane Seizure Act, provides that the seizure shall be made "by the Secretary of Justice, the Secretary of the Treasury or the Police Superintendent," acting through their delegates. 34 L.P.R.A. 1722(a). While some federal forfeiture

statutes provide for the issuance of a warrant or other process for seizure of forfeitable property and may expressly require "cause" or "probable cause" before a seizure may be made (*e.g.*, 19 U.S.C. 1595a; 21 U.S.C. 881(b); 26 U.S.C. 7302; cf. 18 U.S.C. 3113), the majority, like the Puerto Rican statute, do not. A requirement of "cause," however, has been read into some federal forfeiture statutes by judicial construction. *E.g., United States* v. *Troiano,* 365 F. 2d 416, 418 (C.A. 3), certiorari denied, 385 U.S. 958 (construing 49 U.S.C. 781–782); cf. *Burge* v. *United States,* 342 F. 2d 408, 414 (C.A. 9), certiorari denied, 382 U.S. 829 (same).

In many cases the act resulting in forfeiture is a crime and the grounds on which seizure and forfeiture are authorized would also constitute grounds for an ordinary seizure of property for evidentiary purposes, either with or without a warrant.[9] See generally 18 U.S.C. 3103a; Fed. R. Crim. P. 41(a). (The record does not permit any definitive statements to be made as to whether an evidentiary seizure, with or without a warrant, would have been justified here.) In other instances, however, seizure may be authorized under a forfeiture statute even though, due to absence of criminal intent or for other reasons (cf. *One Lot Emerald Cut Stones* v. *United States,* 409 U.S. 232), a seizure for use in criminal proceedings would not be appropriate. See also 21 U.S.C. 334(a).

[9] Some forfeiture statutes require the conviction of the person using the property before the forfeiture can become effective. *E.g.*, 16 U.S.C. 171; cf. 18 U.S.C. 3611.

2. Necessity for judicial proceedings

Some statutes, like the Puerto Rican enactment, provide for forfeiture of property without judicial proceedings if the seizure is not challenged within a specified time, but many federal statutes require institution of judicial condemnation proceedings to forfeit the property. *E.g.,* 19 U.S.C. 1610 (condemnation proceedings required in every case where value of property seized under customs laws exceeds $2500); 26 U.S.C. 7323 (same as to forfeitures under Internal Revenue Code); compare 19 U.S.C. 1607, *et seq.* (summary forfeiture proceedings under customs laws where property value is $2500 or less); 26 U.S.C. 7325 (same as to goods, wares or merchandise subject to forfeiture under Internal Revenue Code).

3. Duration of forfeiture proceedings

Few statutes specify time limits within which forfeiture proceedings must be commenced or completed after seizure, but such time limits have been read into some forfeiture statutes. *E.g., United States* v. *Thirty-Seven (37) Photographs,* 402 U.S. 363; cf. *Sarkisian* v. *United States,* 472 F. 2d 468 (C.A. 10), certiorari denied, No. 73–252, October 23, 1973.

4. Possession of property pending final decision

Like the Puerto Rican statute, some forfeiture statutes provide for the return of the seized property to the owner pending disposition of the condemnation proceedings. *E.g.,* 18 U.S.C. 3617(d) (App., *infra,*

pp. 43–44); cf. 19 U.S.C. 1614.[10] Even in the absence of a statutory obligation to do so, moreover, the United States may in appropriate cases enter into court-approved stipulations permitting a bond to be substituted for seized property in forfeiture cases. Cf. Rule E(5), Fed. Supp. R. Civ. P.

B. THE DISTRICT COURT MISAPPLIED *FUENTES* V. *SHEVIN*

Relying essentially upon *Fuentes* v. *Shevin*, 407 U.S. 67, the district court found the Puerto Rican forfeiture statute unconstitutional "on its face" because it provides no procedure "whereby the seizure can be contested before it is made" (App. 37). This conclusion misconceives the thrust of *Fuentes* by imposing Fifth Amendment restrictions against deprivation of property on seizures otherwise lawful under the Fourth Amendment; it also undermines the legitimate exercise of a state's police power to apprehend and convict lawbreakers, to regulate prohibited activity, and to collect revenues and penalties.

1. Seizures of forfeitable property are not covered by the rationale of Fuentes

It is well established that due process does not require an adversary hearing "in every conceivable

[10] A general provision for release of seized property upon the posting of a bond (28 U.S.C. (1940 ed.) 751) was omitted in the codification of Title 28 in 1948 as being covered by 19 U.S.C. 1605, *et seq.* (see 62 Stat. 993; H. Rep. No. 308, 80th Cong., 1st Sess., p. A238), although those provisions are actually more limited in scope.

case of government impairment of private interest." *Cafeteria Workers* v. *McElroy,* 367 U.S. 886, 894. The procedures required for due process in a given circumstance depend upon the government function involved as well as on the private interest that may be affected by governmental action. *Id.* at 895; *Goldberg* v. *Kelly,* 397 U.S. 254, 263; cf. *Morrissey* v. *Brewer,* 408 U.S. 471.

Accordingly, this Court has held in a variety of circumstances that governmental seizure or control of private property in advance of the opportunity for an adversary hearing is consistent with the demands of due process. Such circumstances have included seizure and destruction of unwholesome food (*North Am. Cold Storage Co.* v. *City of Chicago,* 211 U.S. 306), attachment of property of non-residents for jurisdictional purposes (*Ownbey* v. *Morgan,* 256 U.S. 94), creation of liens on bank stock (*Coffin Bros. & Co.* v. *Bennett,* 277 U.S. 29), seizure of property to pay taxes (*Phillips* v. *Commissioner of Internal Revenue,* 283 U.S. 589), state custody of inactive bank accounts (*Anderson Nat'l Bank* v. *Luckett,* 321 U.S. 233), control of failing savings and loan associations (*Fahey* v. *Mallonee,* 332 U.S. 245), seizure of harmless articles bearing misleading labels (*Ewing* v. *Mytinger & Casselberry, Inc.,* 339 U.S. 594), or seizure of allegedly obscene imported matter (*United States* v. *Thirty-Seven (37) Photographs, supra*). Most of the instances in which deferral of a hearing has been sustained have involved deprivation of property, rather than liberty,

reflecting this Court's observation in *Phillips* v. *Commissioner, supra,* 283 U.S. at 596–597:

> Where only property rights are involved, mere postponement of the judicial enquiry is not a denial of due process, if the opportunity given for the ultimate judicial determination of the liability is adequate. * * * Delay in the judicial determination of property rights is not uncommon where it is essential that governmental needs be immediately satisfied. * * *

Of course, where property is taken for essentially private purposes, rather than to serve directly any important governmental purpose, the justification for deferral of a hearing is lessened. That was the situation in *Fuentes* and its precursor, *Sniadach* v. *Family Finance Corp.,* 395 U.S. 337.

Fuentes involved the validity of state statutes permitting creditors, by way of replevin actions, "to seize goods allegedly wrongfully detained—not wrongfully taken—by debtors." 407 U.S. at 79. All that was required to justify immediate seizure under those statutes was the creditor's bare assertion that he was entitled to the property; no pre-seizure notice or hearing was required. The Court found that those statutory procedures resulted in a deprivation of property without due process by "failing to provide for hearings 'at a meaningful time' "—*i.e.,* prior to the seizure (407 U.S. at 80). As the Court pointedly observed (*id.* at 93):

> The statutes * * * abdicate effective state control over state power. Private parties, serving their own private advantage, may unilater-

> ally invoke state power to replevy goods from another. No state official participates in the decision to seek a writ; no state official reviews the basis for the claim to repossession; and no state official evaluates the need for immediate seizure. * * *

Seizure under most forfeiture statutes stands on a totally different footing. These statutes involve the exercise of state power to achieve critical public interests and are not aimed at fostering the interests of private litigants. Thus, summary seizure of a vehicle or vessel may be proper in order to assure *in rem* jurisdiction over it for the purpose of imposing the penalty of forfeiture or to prevent its further unlawful use. *Dobbins's Distillery* v. *United States*, 96 U.S. 395; *One Lot Emerald Cut Stones* v. *United States*, *supra*, 409 U.S. at 237.[11] Accordingly, seizures for forfeiture come within the "extraordinary situations" exception to the requirement of pre-seizure notice and hearing recognized in *Fuentes*. See also *Boddie* v. *Connecticut*, 401 U.S. 371, 379. As the Court stated in *Fuentes*, a prior hearing may be dispensed with if (407 U.S. at 91):

> the seizure has been directly necessary to secure an important governmental or general

[11] Some statutes authorizing seizure and forfeiture are part of a system of control of imports and entry across national borders (*e.g.*, 19 U.S.C. 1595a), a function that may be subject to less stringent constitutional restrictions than is purely domestic regulation. See *Carroll* v. *United States*, 267 U.S. 132, 154; *United States* v. *12 200-Ft. Reels of Super 8MM Film*, No. 70-2, decided June 21, 1973, slip op., pp. 2-3; cf. *Almeida-Sanchez* v. *United States*, No. 71-6278, decided June 21, 1973, slip op., pp. 6-7.

> public interest. Second, there has been a special need for very prompt action. Third, the State has kept strict control over its monopoly of legitimate force: the person initiating the seizure has been a government official responsible for determining, under the standards of a narrowly drawn statute, that it was necessary and justified in the particular instance. * * *

The seizure in this case appears to have satisfied most of the foregoing criteria. It secured important governmental interests, and it was initiated by a government official responsible for determining under the standards of a narrowly drawn statute that the seizure was necessary and justified in the particular circumstances. Here the seizure guaranteed Puerto Rico *in rem* jurisdiction over the vessel for proceedings based on its use in violation of the Puerto Rican Controlled Substances Act (24 L.P.R.A. (Cum. Supp. 1972) 2512), thereby serving a leigtimate public interest in assuring its availability as a fine for wrongdoing and preventing its further illicit use.

Failure to seize the vessel could have resulted in its removal by persons who were unknown to the police but possibly involved in the illegal transportation of the marijuana.[12] Likewise, if at the time of the seizure the users of the vessel were free (the record does not reveal whether they had been admitted to bail), there was the possibility that they might have removed the vessel to a jurisdiction beyond the reach

[12] The record does not reveal the reasons for the timing of the seizure in this case nor whether it would have been feasible to make the seizure sooner than it was made.

of Puerto Rican process. Finally, as appellee stipulated (App. 23), the seizure was duly authorized by the Puerto Rican Superintendent of Police pursuant to the provisions of 24 L.P.R.A. 2512 (a)(4) and (b), which incorporate the provisions of Puerto Rico's Uniform Vehicle, Mount, Vessel and Plane Seizure Act, 34 L.P.R.A. 1722.

2. Seizures of forfeitable property are within the exception recognized in Fuentes for evidentiary seizures

In addition to the Court's recognition in *Fuentes* of the above-described category of cases where notice and opportunity for a hearing need not precede a seizure or other deprivation of property, the Court specifically noted that seizure of property under a warrant was an "entirely different" situation (407 U.S. at 93–94, n. 30):

> The seizure of possession under a writ of replevin is entirely different from the seizure of possessions under a search warrant. First, a search warrant is generally issued to serve a highly important governmental need—*e.g.*, the apprehension and conviction of criminals—rather than the mere private advantage of a private party in an economic transaction. Second, a search warrant is generally issued in situations demanding prompt action. The danger is all too obvious that a criminal will destroy or hide evidence or fruits of his crime if given any prior notice. Third, the Fourth Amendment guarantees that the State will not issue search warrants merely upon the conclusory application of a private party. It guarantees that the State

> will not abdicate control over the issuance of warrants and that no warrant will be issued without a prior showing of probable cause. Thus, our decision today in no way implies that there must be opportunity for an adversary hearing before a search warrant is issued * * *.

The issuance of a warrant, moreover, is not essential to exclude a seizure from the operation of the *Fuentes* principle, for this Court has reiterated since *Fuentes* the long-settled rule that, at least as to contraband and vehicles or other mobile conveyances, seizures may lawfully be made even in the absence of a warrant—and, *a fortiori,* the absence of any prior notice or opportunity to be heard. *Cady* v. *Dombrowski,* No. 72–586, decided June 21, 1973; see, *e.g., Chambers* v. *Maroney,* 399 U.S. 42.[13]

These reasons apply equally to seizures for forfeiture, some of which may indeed be undertaken pursuant to a warrant (see pp. 12–13, *supra*), in which event prior notice and an adversary hearing would be un-

[13] No question has been raised or decided in this case concerning the applicability of the Fourth Amendment, including the warrant requirement, to seizures for forfeiture. Although it has long been understood that such seizures ordinarily may be made without a warrant (cf. *Cooper* v. *California,* 386 U.S. 58), a three-judge district court has recently held that such seizures are subject to essentially the same warrant requirements as are evidentiary searches, and that a federal forfeiture statute (49 U.S.C. 782) should be construed as incorporating the warrant requirements of the Fourth Amendment. *Melendez* v. *Shultz,* Civ. No. 72–3230–F (D. Mass.), decided March 30, 1973, appeal dismissed, No. 73–1173 (C.A. 1), decided November 5, 1973. We are presently considering whether to seek further review in that case.

necessary. Indeed, in many cases the circumstances that would subject property to forfeiture involve criminal violations, and the property would be subject to seizure for evidentiary purposes without a prior hearing and perhaps without a warrant. At least in such cases, it would be illogical and impractical to hold that a forfeiture would be barred because there had been no pre-seizure adversary hearing.

Even where the property is not subject to seizure for evidentiary purposes, substantial governmental interests militate against a requirement of pre-seizure notice and hearing. In many if not most instances, it would not be practical to provide notice and an adversary hearing prior to seizure. Even in circumstances (such as may have existed in this case) where the substance being unlawfully transported has been seized and those in possession of the vehicle or vessel have been arrested, pre-seizure notice to the owner of the vehicle or vessel would alert persons with an interest in it that seizure is imminent, thereby perhaps allowing others not yet apprehended but also guilty of the illicit transportation of the substance (or simply desirous of preventing forfeiture) to remove the unseized vehicle or vessel surreptitiously and escape legal sanctions.[14]

The court below failed to indicate the form that the pre-seizure hearing it would require must take, nor did it delineate what elements the government would

[14] The record here does not indicate whether the lessees were arrested or were in custody at the time of the seizure or whether it would have been practicable to obtain a warrant for the seizure of the vessel.

be required to establish in order to justify a seizure. Even assuming *arguendo* that a pre-seizure adversary proceeding were necessary in some circumstances, we submit that the issues should be confined in a manner similar to a preliminary hearing in a criminal case, and that the government should not be compelled to make a plenary showing in support of the forfeiture (particularly if the necessary showing includes a demonstration of the owner's "innocence" of complicity in the unlawful act serving as the predicate for forfeiture).[15]

In related circumstances, this Court has recognized that the practical requirements of law enforcement may make it necessary to dispense with some of the formal procedures that might otherwise be required. Thus, the courts have held that law enforcement officers are not powerless to act in situations where they have probable cause to believe that criminal activity is imminent or underway (*e.g., Carroll* v. *United States, supra*), that dangerous substances may be introduced into commerce (*e.g., United States* v. *Kordel,* 397 U.S. 1), or that there is a possibility that evidence or contraband may be destroyed or removed (*e.g., United States* v. *Wright,* 449 F. 2d 1355, 1361–1362 (C.A. D.C.)). As this Court stated in *Carroll* v. *United States, supra,* 267 U.S. at 153, it is not always practical to obtain a search warrant to search for contraband in a ship, motor-boat, wagon, or automobile, because such conveyances can readily be moved.

[15] We are not dealing here with any First Amendment interest in the property seized, which might implicate special considerations concerning pre-seizure hearings. See p. 24, *infra*.

The same reasoning should apply to seizures for forfeitures.

C. THE DISTRICT COURT DECISION IS INCONSISTENT WITH THIS COURT'S DECISION IN *THIRTY-SEVEN PHOTOGRAPHS* SUSTAINING SEIZURE IN ADVANCE OF JUDICIAL PROCEEDNGS

In *United States* v. *Thirty-Seven (37) Photographs*, 402 U.S. 363, this Court construed and upheld a statute providing for forfeiture of obscene imported matter notwithstanding the provision for seizure in advance of judicial proceedings.[16] See 19 U.S.C. 1305 (a). The Court held that such seizure was not improper so long as the judicial proceedings required by the statute were commenced within 14 days after the seizure and completed within 60 days after the seizure, unless further delays were caused by actions of the person claiming the seized property. The time limits in the Puerto Rican forfeiture statute (under which the claimant is entitled to give bond and have the property returned within ten days of challenging the seizure) are consistent with the requirements of *Thirty-Seven Photographs*.[17]

D. PEARSON, AS LESSOR OR CONDITIONAL VENDOR, LACKS STANDING TO CHALLENGE THE VALIDITY OF THE SEIZURE ITSELF

Even if there were a potential deficiency in the seizure provisions of the Puerto Rican forfeiture laws, Pearson, as opposed to the lessees, does not have standing to assert that the seizure (as opposed to the for-

[16] Although *Thirty-Seven Photographs* was not mentioned in *Fuentes*, it was consistent with *Fuentes* and presumably was not overruled *sub silentio*.

[17] The validity of the instant seizure follows *a fortiori* from *Thirty-Seven Photographs*, as there is here no problem of delay constituting a form of otherwise prohibited censorship, as in that case.

feiture) deprived it of property without due process of law. Although it is stipulated that Pearson was the "lawful owner" of the vessel at the time of the seizure (App. 24), it was not then entitled to possession of it. Hence, the seizure itself did not interfere with Pearson's exercise of any rights it had concerning the vessel. Any deprivation of Pearson's rights was caused not by the seizure but by the subsequent forfeiture, a matter to be discussed below.

Indeed, it may be that a seizure of a vehicle or vessel, when it is being used for illegal purposes by one having possession under a lease or conditional sales contract, actually protects the proprietary interests of the lessor or seller. If not seized, the lawbreakers or their confederates could abscond and remove the vehicle or vessel beyond the control of both the state and the lessor or owner. Even where all the wrongdoers are arrested, the owner's interests would not likely be served if the state were to abandon the property rather than to seize it.

II. FORFEITURE OF A VEHICLE OR VESSEL USED FOR UNLAWFUL PURPOSES BY A LESSEE DOES NOT DEPRIVE AN "INNOCENT" OWNER OF PROPERTY WITHOUT DUE PROCESS OR RESULT IN A TAKING WITHOUT JUST COMPENSATION

A. THE VARIED SUBSTANTIVE PROVISIONS OF FORFEITURE STATUTES

In providing for forfeiture of a vessel or other conveyance used to transport contraband, Puerto Rican law has followed a legislative approach adopted by the First Congress (*e.g.*, 1 Stat. 39) and having ancient historic roots. While it is true that forfeiture laws originally reflected "the fiction that inanimate objects themselves can be guilty of wrongdoing"

(*United States* v. *United States Coin & Currency,* 401 U.S. 715, 719), Congress and state legislatures have repeatedly found forfeiture proceedings to be a useful and appropriate means for dealing with a variety of law enforcement and regulatory purposes, thus rendering academic the historic rationale of forfeitures. See *McGowan* v. *Maryland,* 366 U.S. 420, 431–449.

One distinction that is reflected in such statutes is between "*per se*" and "derivative" contraband. See *One 1958 Plymouth Sedan* v. *Pennsylvania,* 380 U.S. 693, 699. An item is contraband *per se* if it is subject to forfeiture because the legislature has declared that no private property rights in it may exist, or that its mere possession is unlawful. Cf. *Trupiano* v. *United States,* 334 U.S. 699, 710; *United States* v. *Jeffers,* 342 U.S. 48, 53–54. An item is derivative contraband if it is subject to forfeiture because it has been used in connection with some unlawful activity, whether or not involving a crime. Cf. *One Lot Emerald Cut Stones* v. *United States, supra.*

Forfeiture statutes also differ in that under some the forfeiture is mandatory or automatic, occurring when the specified act occurs, whereas under others it is discretionary or conditional and occurs only if and when the state follows specified procedures. See *One 1958 Plymouth Sedan* v. *Pennsylvania, supra,* 380 U.S. at 699. One consequence of this distinction is that, with a mandatory forfeiture, title is said to vest in the state when the forfeiting act occurs and is simply confirmed in the forfeiture or condemnation proceeding, so that the owner is unable after the forfeiting act to convey the

property even to a *bona fide* purchaser. *E.g., Henderson's Distilled Spirits,* 14 Wall. 44, 56–57; *Thacher's Distilled Spirits,* 103 U.S. 679; *United States* v. *Stowell,* 133 U.S. 1, 18–19.

Forfeiture statutes also vary in their treatment of the owner's alleged lack of involvement in or knowledge of the acts resulting in the forfeiture. Some statutes expressly exclude from their coverage property used by a person other than the owner, when that person's possession was unlawful or acquired by violation of the criminal laws. *E.g.,* 21 U.S.C. 881(a)(4)(B); 49 U.S.C. 782. Even without such an explicit limitation, however, it has long been settled that forfeiture statutes do not apply when the property is in the control of a thief at the time of the forfeiting act, or where the forfeiting act is not done with the "consent or connivance" of either the owner of the property or someone employed or entrusted by the owner (as in this case by means of the lease) with the property. *E.g., Peisch* v. *Ware* (*The Palmyra*), 4 Cranch 347, 364; see *Dobbins's Distillery* v. *United States, supra,* 96 U.S. at 399, 401–402.

Federal forfeiture statutes also differ in their treatment of forfeiting acts done, without knowledge or involvement of the owner, by one who may be legitimately in possession of the property when doing the act. A few such statutes expressly exclude from their scope property used in violation of the law as to which the owner (or person in charge of the property for the owner) was not "a consenting party or privy" (*e.g.,* 19 U.S.C. 1594; 21 U.S.C. 881(a)(4)(A); 46

U.S.C. 961(b); 49 U.S.C. 782; see *United States* v. *One 1971 Ford Truck*, 346 F. Supp. 613 (C.D. Cal.)), but many do not. Moreover, most federal forfeiture statutes provide for discretionary administrative [18]

[18] With respect to items seized or fines, penalties and forfeitures incurred under the customs or navigation laws, the Secretary of the Treasury is authorized under 19 U.S.C. 1618 to mitigate or remit any such fine, penalty or forfeiture "upon such terms and conditions as he deems reasonable and just," or to order discontinuance of any prosecution relating thereto,

> if he finds that such fine, penalty, or forfeiture was incurred without willful negligence or without any intention on the part of the petitioner to defraud the revenue or to violate the law, or finds the existence of such mitigating circumstances as to justify the remission or mitigation of such fine, penalty, or forfeiture * * *.

Forfeitures under various other federal laws have been made subject to Section 1618. *E.g.*, 21 U.S.C. 881(d); 26 U.S.C. 7327.

The applicable regulations implementing this statute provide that any person who appears to have an interest in the seized property must be given written notice (19 C.F.R. 162.31(a)) of its liability to forfeiture and of his right to petition the Secretary of the Treasury for remission or mitigation of the forfeiture under 19 U.S.C. 1618. A petition for such relief must be filed within 60 days from the date the notice of forfeiture was mailed. 19 C.F.R. 171.12(b). If the seized property was in the possession of another who was responsible for the act which resulted in the seizure, the petitioner must produce evidence explaining the manner in which the other person acquired possession and showing that, prior to parting with the property, he did not know or have reasonable cause to believe that the property would be used in violation of the law or that the violator had a criminal record or a reputation for commercial crime. 19 C.F.R. 171.13(a). These provisions are also extended to those holding chattel mortgages or conditional sales contracts. 19 C.F.R. 171.13(b). If the petitioner is not satisfied with the decision, he may file a supplemental petition wthin 60 days of the decision. 19 C.F.R. 171.33.

If no petition is filed, or if, after consideration and decision of a petition, it appears that legal proceedings in connection

with the seizure are necessary, the appropriate officer, after appraising the merchandise (19 U.S.C. 1606; 19 C.F.R. 162.43), must prepare a full report of the seizure for the United States Attorney, giving all the relevant facts and circumstances. 19 U.S.C. 1603; 19 C.F.R. 162.32(b), 162.49(a). Upon receipt of such a report, the United States Attorney is required "immediately to inquire into the facts" and, if it appears probable that a forfeiture has been incurred, "forthwith to cause the proper proceedings to be commenced and prosecuted, without delay." 19 U.S.C. 1604. (Facts bearing on the "innocence" of the owner that might be pertinent in a remission proceeding would not be relevant in the judicial forfeiture proceeding, unless, of course, the applicable statute so provides.

Under 19 C.F.R. 171.1(a) no administrative action may be taken on any petition for relief after the case has been referred to the United States Attorney for institution of legal proceedings. Any petitions received in that period must be forwarded to the United States Attorney, and it is the Attorney General who thereafter may allow remission or mitigation under the Secretary's authority. See *United States* v. *One 1970 Buick Riviera*, 463 F. 2d 1168, 1170, n. 2 (C.A. 5), certiorari denied *sub nom. Nat'l Am. Bank of New Orleans* v. *United States*, 409 U.S. 980. After the case has been adjudicated, the Secretary of the Treasury reassumes jurisdiction and may still remit or mitigate the forfeiture.

In addition, any person who has an interest in forfeited property may petition the Secretary of the Treasury for remission or mitigation of the forfeiture of the property or any part owned by him up to three months after its sale. See 19 U.S.C. 1613. Upon proof that the petitioner was unaware of the seizure and was in such circumstances as prevented him from knowing of it and that forfeiture was incurred without any negligence or intent to defraud on his part, the Secretary may order the proceeds of the sale or any part thereof restored to the applicant.

Similar regulations apply to the Attorney General's authority to remit or mitigate forfeitures under various laws. See 28 C.F.R. 9.1 *et seq.*

When it enacted 49 U.S.C. 781 in 1939, extending forfeiture provisions to activities not previously covered, Congress also extended the provisions for remission and mitigation to such forfeitures, and it was expressly noted that a petition for re-

or judicial[19] relief from forfeiture through remission or mitigation if, for example, the forfeiture was incurred "without willful negligence or without any intention" on the part of the owner to violate the law (19 U.S.C. 1618), or if the owner "had at

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mission or mitigation is the proper remedy for the property owner when alleviating circumstances exist. See H. Rep. No. 1054, *supra*, at pp. 3–4; S. Rep. No. 926, *supra*, at p. 3.

[19] With respect to forfeitures decreed for violation of the internal revenue laws relating to liquor, the court is given exclusive jurisdiction to remit or mitigate the forfeiture. 18 U.S.C. 3617(a). Under 18 U.S.C. 3617(b), the court may not remit or mitigate unless the claimant proves the following elements:

> (1) that he has an interest in such vehicle or aircraft, as owner or otherwise, which he acquired in good faith, (2) that he had at no time any knowledge or reason to believe that it was being or would be used in the violation of laws of the United States or of any State relating to liquor, and (3) if it appears that the interest asserted by the claimant arises out of or is in any way subject to any contract or agreement under which any person having a record or reputation for violating laws of the United States or of any State relating to liquor has a right with respect to such vehicle or aircraft, that, before such claimant acquired his interest, or such other person acquired his right under such contract or agreement, whichever occurred later, the claimant, his officer or agent, was informed in answer to his inquiry, at the headquarters of the sheriff, chief of police, principal Federal internal-revenue officer engaged in the enforcement of the liquor laws, or other principal local or Federal law-enforcement officer of the locality in which such other person acquired his right under such contract or agreement, of the locality in which such other person then resided, and of each locality in which the claimant has made any other inquiry as to the character or financial standing of such other person, that such other person had no such record or reputation.

no time any knowledge or reason to believe that * * * [the property] was being or would be used in the violation of" specified laws. 18 U.S.C. 3617(b); cf. 21 U.S.C. 334(d)(3). See generally *United States v. Morris*, 10 Wheat. 246, 293–295; *United States* v. *One 1936 Ford Coach*, 307 U.S. 219.

In sum, under most federal forfeiture statutes, as under the Puerto Rican statute, the seizure and forfeiture are not barred by the fact that the owner or lessor of property was neither aware of nor involved in the unlawful utilization of the property by the one to whose custody or control the property had been entrusted. However, under nearly all federal forfeiture statutes, administrative relief from the forfeiture is available to "innocent" owners of the property.

B. THIS COURT HAS FREQUENTLY UPHELD THE CONSTITUTIONALITY OF STATUTES PROVIDING FOR FORFEITURE OF PROPERTY NOTWITHSTANDING THE "INNOCENCE" OF THE OWNER OF THE PROPERTY

This Court has frequently considered and rejected the contention that the application of forfeiture laws to the property of an owner who was not aware of or involved in the act subjecting the property to forfeiture results in a deprivation of property without due process or a taking of property without just compensation. *E.g., Harmony* v. *United States* (*Brig Malek Adhel*), 2 How. 210, 233–235; *Dobbins's Distillery* v. *United States, supra; J.W. Goldsmith Jr.-Grant Co.* v. *United States,* 254 U.S. 505; *United States* v. *One Ford Coupe,* 272 U.S. 321; *Van Oster* v.

Kansas, 272 U.S. 465; cf. *United States* v. *One 1970 Buick Riviera,* 463 F. 2d 1168 (C.A. 5), certiorari denied *sub nom. Nat'l Am. Bank of New Orleans* v. *United States,* 409 U.S. 980; *United States* v. *One 1967 Ford Mustang,* 457 F. 2d 931 (C.A. 9), certiorari denied *sub nom. Bank of Am. Nat'l Trust & Sav. Ass'n* v. *United States,* 409 U.S. 850. But cf. *United States* v. *Stowell, supra,* 133 U.S. at 19–20 (forfeiture of mortgaged land used for illegal purposes covers only the mortgagor's interest—equity of redemption—where mortgagee was unaware of the forfeiting act). It is thus "well established" that, in the absence of a statute to the contrary, "property may be seized and statutorily forfeited without payment of any compensation even though its owner may not have engaged in any conduct which may be characterized as criminal or wilfully negligent." *McKeehan* v. *United States,* 438 F. 2d 739, 742 (C.A. 6).

The rationale of these decisions is that it is neither unreasonable nor constitutionally impermissible for a legislature to impose, in effect, strict or absolute liability upon owners of property, with respect to persons to whom they lend, lease, sell or otherwise entrust their property, just as courts and legislatures have imposed strict liability without fault upon those who engage in certain activities. *E.g., New York Cent. R.R.* v. *White,* 243 U.S. 188, 204; *Exner* v. *Sherman Power Constr. Co.,* 54 F. 2d 510, 512–515 (C.A. 2). Thus, "it may be said, that Congress interposes the care and responsibility of [the owner] * * * in aid of the prohibitions of the law and its punitive provisions." *J. W. Gold-*

smith, Jr.-Grant Co. v. *United States, supra,* 254 U.S. at 510.

As this Court pointed out in *Van Oster* v. *Kansas, supra,* 272 U.S. at 467–468:

> It is not unknown or indeed uncommon for the law to visit upon the owner of property the unpleasant consequences of the unauthorized action of one to whom he has entrusted it. Much of the jurisdiction in admiralty, so much of the statute and common law of liens as enables a mere bailee to subject the bailed property to a lien, the power of a vendor of chattels in possession to sell and convey good title to a stranger, are familiar examples. They have their counterpart in legislation imposing liability on owners of vehicles for the negligent operation by those entrusted with their use, regardless of a master-servant relation. * * * They suggest that certain uses of property may be regarded as so undesirable that the owner surrenders his control at his peril. The law thus builds a secondary defense against a forbidden use and precludes evasions by dispensing with the necessity of judicial inquiry as to collusion between the wrongdoer and the alleged innocent owner. So here the legislature, to effect a purpose clearly within its power, has adopted a device consonant with recognized principles and therefore within the limits of due process.[20]

[20] The legislative power to impose conditions or potential liabilities upon the continued possession or use of a type of property is but an adjunct of the recognized power to prohibit such possession or use altogether. See, *e.g.*, *Hamilton* v. *Kentucky Distilleries & Warehouse Co.*, 251 U.S. 146, 156–157.

Congress has, moreover, made discriminating legislative judgments in imposing on property owners liability for forfeitures. Thus, under the principal federal forfeiture statutes, a vehicle or vessel used as a common carrier is not subject to forfeiture unless the owner or person in charge of it for the owner is "a consenting party or privy" to the unlawful action which would otherwise subject the vehicle or vessel to forfeiture. *E.g.*, 19 U.S.C. 1594; 21 U.S.C. 881(a)(4)(A); 49 U.S.C. 782. In other words, although the owner is made strictly liable for the actions of persons placed in charge of the vehicle or vessel, the unilateral illegal activities of a passenger would not subject the vehicle or vessel to forfeiture. Compare *J. W. Goldsmith, Jr.-Grant Co.* v. *United States, supra*, 254 U.S. at 512; *United States* v. *One Ford Coupe, supra*, 272 U.S. at 333.

In some of the provisions for remission or mitigation of forfeitures, Congress has explicitly imposed an obligation on property owners to investigate the background of those to whom they entrust their property. *E.g.*, 18 U.S.C. 3617(b); see *United States* v. *One 1936 Ford Coach, supra*. In addition to such investigation, a property owner may also protect against the risk of forfeiture by procuring insurance or by requiring indemnification by the persons to whom the property is entrusted. Indeed, in the present case the possibility of "forfeiture" or any other "loss imposed by law" was not only anticipated by Pearson but was also explicitly covered by a provision of the lease requiring the lessees to hold Pearson harmless from such hazards (App. 9).

C. THIS COURT'S DECISION IN *COIN & CURRENCY* DID NOT OVERRULE ANY PRIOR DECISIONS UPHOLDING THE VALIDITY OF FORFEITURE STATUTES

In holding that application of the Puerto Rican forfeiture statute under the circumstances of this case would deprive Pearson of property without due process or just compensation, the district court concluded that the above-cited decisions of this Court "have since been overruled" by *United States* v. *United States Coin & Currency, supra.* The portion of the *Coin & Currency* opinion relied upon, however, was dictum as regards the issues in this case.

The question in *Coin & Currency* was whether forfeiture proceedings under 26 U.S.C. 7302 could be regarded as sufficiently "criminal" in nature to be subject to the prohibitions of the Fifth Amendment concerning compelled self-incrimination.[21] With respect to the government's contention that the guilt of the owner of the forfeitable property is irrelevant under 26 U.S.C. 7302, the opinion in *Coin & Currency* expressly acknowledged that "centuries of history support the Government's claim that forfeiture statutes similar to this one have an extraordinarily broad scope" (401 U.S. at 719) and specifically disavowed any reconsideration of the question whether a forfeiture statute as broad as 26 U.S.C. 7302 is consistent with the Fifth Amendment's due process and just compensation provisions. *Id.* at 720–721.

[21] This Court's subsequent decision in *One Lot Emerald Cut Stones* v. *United States, supra*, makes clear that *Coin & Currency* did not hold that *all* forfeiture proceedings should be regarded as criminal in nature.

In short, *Coin & Currency* did not involve the issue raised here and certainly did not overrule this Court's long line of decisions sustaining the constitutionality of statutes like the Puerto Rican forfeiture statute involved in this case.

D. FORFEITURE STATUTES IMPOSING STRICT LIABILITY UPON PROPERTY OWNERS ARE STILL A VALID MEANS TO ACHIEVE IMPORTANT GOVERNMENTAL ENDS

Apart from their historical acceptance, forfeiture statutes are, as previously indicated (see pp. 6–8, 32–34, *supra*), supportable as a constitutionally permissible means of regulation and of implementation of various important public purposes. As such, they can be sustained whether or not they contain any provision for remission or mitigation in particular cases of hardship or extenuating circumstances. In any event, where such provisions do exist, they must surely be taken into account in laying to rest any doubts that might otherwise exist as to the constitutionality of forfeiture statutes as applied in particular circumstances.

Thus, in *Coin & Currency* this Court viewed the forfeiture statutes "in their entirety," including the provisions for remission and mitigation. 401 U.S. at 721. After noting that the Secretary of the Treasury was authorized to return seized property under 19 U.S.C. 1618 "upon such terms and conditions as he deems reasonable and just," the Court further observed that "[i]t is not to be presumed that the Secretary will not conscientiously fulfill this trust, and

the courts have intervened when the innocent petitioner's protests have gone unheeded" (*ibid.*).[22] Compare the congressional observation, in extending to other areas the application of customs remission and mitigation procedures in effect since 1790 (see 1 Stat. 122), that "[t]hroughout the whole period of enforcement no undue hardship has been charged against the customs forfeiture laws for the reason that * * * provision is made for the remission or mitigation of forfeitures when alleviating circumstances exist." H. Rep. No. 1054, *supra*, at p. 3.

Finally, as this Court similarly indicated in *Yakus* v. *United States*, 321 U.S. 414, where a procedure is available to avoid or ameliorate a deprivation of property that might otherwise occur, one cannot contend that constitutional rights are infringed, except upon a

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[22] The Court cited *United States* v. *Edwards*, 368 F. 2d 722 (C.A. 4) and *Cotonificio Bustese, S.A.* v. *Morgenthau*, 121 F. 2d 884 (C.A.D.C.). In general, the courts have held that the decision of the Secretary or the Attorney General on a petition for remission or mitigation is a matter of "discretion" not subject to judicial review. *E.g.*, *United States* v. *One 1970 Buick Riviera*, *supra*; *United States* v. *One 1967 Ford Mustang*, *supra*. Although the statutory standard and grant of discretion are broad, so that judicial review would ordinarily be inappropriate or stringently circumscribed (compare *Citizens to Preserve Overton Park, Inc.* v. *Volpe*, 401 U.S. 402, 410–413), we do not contend that the courts are totally disabled from correcting manifest injustice in an extreme case. That decisions concerning remission and mitigation of forfeitures are not inherently unsuited to judicial review is suggested by the fact that some statutes provide for remission or mitigation by the court decreeing the forfeiture (see, *e.g.*, p. 30, *supra*, n. 19, and such judicial determinations have been subject to appellate review by this Court. *E.g.*, *United States* v. *One 1936 Ford Coach*, *supra*.

showing that the procedure is incapable of affording due process. That cannot be said of forfeiture statutes containing provisions for remission or mitigation.[23]

E. IN VIEW OF THE PROVISIONS OF THE LEASE, PEARSON LACKS STANDING TO CLAIM THAT THE FORFEITURE DEPRIVED IT OF PROPERTY WITHOUT DUE PROCESS OR JUST COMPENSATION

Even if Pearson has standing to assert any claim in the forfeited property under Puerto Rican law,[24] and

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[23] If this were a federal case, the vessel would presumably be subject to forfeiture under 21 U.S.C. 881(a)(4), under which Pearson's "innocence," while not a bar to forfeiture (cf. 21 U.S.C. 881 (a)(4)(A)), would be relevant to administrative action on a petition for remission or mitigation. 21 U.S.C. 881(d); see 19 U.S.C. 1618. See generally pp. 28–29, *supra*, n. 18. We are not in a position to represent to the court what the position of the Secretary of Treasury or the Attorney General would be on such a petition filed by a person in Pearson's situation, because certain pertinent facts are not known, including the information Pearson either had, sought or should have known about the lessees' background, the efforts made or to be made by Pearson to enforce the lessees' obligations under the lease, and the likelihood of recovery through such efforts.

[24] We do not treat the jurisdictional question, which has been briefed by the Commonwealth (Br. 14–15). The Commonwealth notes that under the law of Puerto Rico, an interested party has 15 days from notification of the forfeiture to institute court proceedings. Here Pearson by its own admission knew of the forfeiture by October 19, 1972 (App. 3), but did not seek judicial relief until November 6, 1972. On the other hand, if it is required that it be formally notified by the Commonwealth, which has not yet occurred (App. 24), Pearson may not yet be barred from pursuing a remedy in court. Compare *Menkarell* v. *Bureau of Narcotics*, 463 F. 2d 88 (C.A. 3); *Jaekel* v. *United States*, 304 F. Supp. 993 (S.D.N.Y.). The record does not reveal when the Commonwealth became aware of Pearson's existence or relationship to the property, nor whether it should have been able to notify Pearson of the seizure and forfeiture. How-

even if substantial constitutional questions might be raised by application of a forfeiture statute against an owner or lessor wholly innocent of involvement in the forfeiting act, it is doubtful that Pearson can in the circumstances of this case be said to have been deprived of its property by operation of the forfeiture statute.

Under the lease, Pearson was entitled to receive the agreed rentals and to recover possession of the vessel or to recover its value, but not both (App. 10–11). Neither the lessees' default nor the forfeiture terminated the lessees' contractual obligation to make Pearson whole. If they were to satisfy that obligation (voluntarily or pursuant to litigation), Pearson would be denied nothing by the forfeiture.[25]

The major impact of the forfeiture, whether it be "penal" or otherwise in nature, is thus not on Pearson but on the lessees.[26] While Pearson was technically the legal owner of the vessel, its interest in it was essentially reversionary; the vessel served as security for the debt owed to it by the lessees. The forfeiture did not extinguish that debt since, despite losing posses-

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ever, the district court stated that it was not disposed to rule on this record that the Commonwealth "did not have reason to believe that notice to the owner was, in fact, given" (App. 36).

[25] The record does not disclose whether or to what extent Pearson has recovered or may recover from the lessees.

[26] This fact would have been even more dramatically apparent if the forfeiture had occurred near the end of the five year term of the lease, at which time the lessees would have made virtually full payment and would have been entitled, by paying $1.00, to divest Pearson of the technical status as "lawful owner."

sion of the vessel, the lessees are still liable under the lease. It is this continuing liability, in fact, which gives the forfeiture statute its impact. See *United States* v. *One 1941 Pontiac Sedan,* 83 F. Supp. 999, 1000–1001 (S.D.N.Y.); H. Rep. No. 1054, *supra,* at pp. 2–3. When a forfeited vehicle or vessel is remitted to a lienholder who had entrusted it to another (*e.g.,* bailee, lessee, conditional vendee) who used it for wrongdoing, the latter's obligation is thereby lessened and perhaps satisfied, and his only loss is his equity in the vehicle or vessel—frequently minimal due to the property's depreciation. Pearson's real contention is thus that its claim against the vessel as satisfaction of the lessees' debt should be afforded legal precedence over the Commonwealth's forfeiture claim. It is not a violation of the Fifth Amendment to deny Pearson that precedence.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be reversed.

Respectfully submitted.

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JANUARY 1974.

APPENDIX

Examples of Federal Forfeiture Statutes

1. TITLE 18

Sections 3113 and 3617 of the Judiciary and Judicial Act of Procedure of June 25, 1948, 62 Stat. 820, 840, as amended, 18 U.S.C. 3113, 3617, provide as follows:

> § 3113. Liquor violations in Indian country
>
> If any superintendent of Indian affairs, or commanding officer of a military post, or special agent of the Office of Indian Affairs for the suppression of liquor traffic among Indians and in the Indian country and any authorized deputies under his supervision has probable cause to believe that any person is about to introduce or has introduced any spirituous liquor, beer, wine or other intoxicating liquors named in sections 1154 and 1156 of this title into the Indian country in violation of law, he may cause the places, conveyances, and packages of such person to be searched. If any such intoxicating liquor is found therein, the same, together with such conveyances and packages of such person, shall be seized and delivered to the proper officer, and shall be proceeded against by libel in the proper court, and forfeited, one-half to the informer and one-half to the use of the United States. If such person be a trader, his license shall be revoked and his bond put in suit.
>
> Any person in the service of the United States authorized by this section to make searches and seizures, or any Indian may take and destroy any ardent spirits or wine found in the Indian country, except such as are kept or

used for scientific, sacramental, medicinal, or mechanical purposes or such as may be introduced therein by the Department of the Army. In all cases arising under this section and sections 1154 and 1156 of this title, Indians shall be competent witnesses.

§ 3617. REMISSION OR MITIGATION OF FORFEITURES UNDER LIQUOR LAWS; POSSESSION PENDING TRIAL.

(*a*) *Jurisdiction of court*

Whenever, in any proceeding in court for the forfeiture, under the internal-revenue laws, of any vehicle or aircraft seized for a violation of the internal-revenue laws relating to liquors, such forfeiture is decreed, the court shall have exclusive jurisdiction to remit or mitigate the forfeiture.

(*b*) *Conditions precedent to remission or mitigation*

In any such proceeding the court shall not allow the claim of any claimant for remission or mitigation unless and until he proves (1) that he has an interest in such vehicle or aircraft, as owner or otherwise, which he acquired in good faith, (2) that he had at no time any knowledge or reason to believe that it was being or would be used in the violation of laws of the United States or of any State relating to liquor, and (3) if it appears that the interest asserted by the claimant arises out of or is in any way subject to any contract or agreement under which any person having a record or reputation for violating laws of the United States or of any State relating to liquor has a right with respect to such vehicle or aircraft, that, before such claimant acquired his interest, or such other person acquired his right under such contract or agreement, whichever occurred later, the claimant, his officer or agent, was informed in answer to his inquiry, at the headquarters of the sheriff, chief of police, principal Federal internal-revenue officer engaged in the enforce-

ment of the liquor laws, or other principal local or Federal law-enforcement officer of the locality in which such other person acquired his right under such contract or agreement, of the locality in which such other person then resided, and of each locality in which the claimant has made any other inquiry as to the character or financial standing of such other person, that such other person had no such record or reputation.

(*c*) *Claimants first entitled to delivery*

Upon the request of any claimant whose claim for remission or mitigation is allowed and whose interest is first in the order of priority among such claims allowed in such proceeding and is of an amount in excess of, or equal to, the appraised value of such vehicle or aircraft, the court shall order its return to him; and, upon the joint request of any two or more claimants whose claims are allowed and whose interests are not subject to any prior or intervening interests claimed and allowed in such proceedings, and are of a total amount in excess of, or equal to, the appraised value of such vehicle or aircraft, the court shall order its return to such of the joint requesting claimants as is designated in such request. Such return shall be made only upon payment of all expenses incident to the seizure and forfeiture incurred by the United States. In all other cases the court shall order disposition of such vehicle or aircraft as provided in sections 304f–304m of Title 40, and if such disposition be by public sale, payment from the proceeds thereof, after satisfaction of all such expenses, of any such claim in its order of priority among the claims allowed in such proceedings.

(*d*) *Delivery on bond pending trial*

In any proceeding in court for the forfeiture under the internal-revenue laws of any vehicle or aircraft seized for a violation of the internal-

revenue laws relating to liquor, the court shall order delivery thereof to any claimant who shall establish his right to the immediate possession thereof, and shall execute, with one or more sureties approved by the court, and deliver to the court, a bond to the United States for the payment of a sum equal to the appraised value of such vehicle or aircraft. Such bond shall be conditioned to return such vehicle or aircraft at the time of the trial and to pay the difference between the appraised value of such vehicle or aircraft as of the time it shall have been so released on bond and the appraised value thereof as of the time of trial; and conditioned further that, if the vehicle or aircraft be not returned at the time of trial, the bond shall stand in lieu of, and be forfeited in the same manner as, such vehicle or aircraft. Notwithstanding this subsection or any other provisions of law relating to the delivery of possession on bond of vehicles or aircraft sought to be forfeited under the internal-revenue laws, the court may, in its discretion and upon good cause shown by the United States, refuse to order such delivery of possession.

2. TITLE 19

Sections 594, 596, and 618 of the Tariff Act of 1930, 46 Stat. 754, as amended, 19 U.S.C. 1594, 1595a and 1618, provide as follows:

§ 1594. LIBEL OF VESSELS AND VEHICLES

Whenever a vessel or vehicle, or the owner or master, conductor, driver, or other person in charge thereof, has become subject to a penalty for violation of the customs-revenue laws of the United States, such vessel or vehicle shall be held for the payment of such penalty and may be seized and proceeded against summarily by libel to recover the same: *Provided,* That no vessel or vehicle used by any person as a com-

mon carrier in the transaction of business as such common carrier shall be so held or subject to seizure or forfeiture under the customs laws, unless it shall appear that the owner or master of such vessel or the conductor, driver, or other person in charge of such vehicle was at the time of the alleged illegal act a consenting party or privy thereto.

§ 1595a. FORFEITURES; PENALTY FOR AIDING UNLAWFUL IMPORTATION

(a) Except as specified in the proviso to section 1594 of this title, every vessel, vehicle, animal, aircraft, or other thing used in, to aid in, or to facilitate, by obtaining information or in any other way, the importation, bringing in, unlading, landing, removal, concealing, harboring, or subsequent transportation of any article which is being or has been introduced, or attempted to be introduced, into the United States contrary to law, whether upon such vessel, vehicle, animal, aircraft, or other thing or otherwise, shall be seized and forfeited together with its tackle, apparel, furniture, harness, or equipment.

(b) Every person who directs, assists financially or otherwise, or is in any way concerned in any unlawful activity mentioned in the preceding subsection shall be liable to a penalty equal to the value of the article or articles introduced or attempted to be introduced.

§ 1618. REMISSION OR MITIGATION OF PENALTIES

Whenever any person interested in any vessel, vehicle, merchandise, or baggage seized under the provisions of this chapter, or who has incurred, or is alleged to have incurred, any fine or penalty thereunder, files with the Secretary of the Treasury under the customs laws or under the navigation laws, before the sale of such vessel, vehicle, merchandise, or baggage a petition for the remission or mitiga-

tion of such fine, penalty, or forfeiture, the Secretary of the Treasury, if he finds that such fine, penalty, or forfeiture was incurred without willful negligence or without any intention on the part of the petitioner to defraud the revenue or to violate the law, or finds the existence of such mitigating circumstances as to justify the remission or mitigation of such fine, penalty, or forfeiture, may remit or mitigate the same upon such terms and conditions as he deems reasonable and just, or order discontinuance of any prosecution relating thereto. In order to enable him to ascertain the facts, the Secretary of the Treasury may issue a Commission to any customs officer to take testimony upon such petition: *Provided*, That nothing in this section shall be construed to deprive any person of an award of compensation made before the filing of such petition.

3. TITLE 21

Section 511(a) of Title II of the Comprehensive Drug Abuse Prevention and Control Act of October 27, 1970, 84 Stat. 1274, as amended, 21 U.S.C. 881, provides as follows:

§ 881. FORFEITURES

(*a*) *Property subject*

The following shall be subject to forfeiture to the United States and no property right shall exist in them:

(1) All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this subchapter.

(2) All raw materials, products, and equipment of any kind which are used, or intended

for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this subchapter.

(3) All property which is used, or intended for use, as a container for property described in paragraph (1) or (2).

(4) All conveyances, including aircraft, vehicles, or vessels, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of property described in paragraph (1) or (2), except that—

(A) no conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of this section unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of this subchapter or subchapter II of this chapter; and

(B) no conveyance shall be forfeited under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or of any State.

(5) All books, records, and research, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this subchapter.

4. TITLE 26

Sections 5688, 7301, and 7302 of the Internal Revenue Code of 1954, 68A Stat. 867, as amended, 26 U.S.C. 5688, 7301 and 7302, provide as follows:

§ 5688. DISPOSITION AND RELEASE OF SEIZED PROPERTY*

* * *

(c) *Release of seized vessels or vehicles by courts*

Notwithstanding any provisions of law relating to the return on bond of any vessel or vehicle seized for the violation of any law of the United States, the court having jurisdiction of the subject matter may, in its discretion and upon good cause shown by the United States, refuse to order such return of any such vessel or vehicle to the claimant thereof. As used in this subsection, the word "vessel" includes every description of watercraft used, or capable of being used, as a means of transportation in water or in water and air; and the word "vehicle" includes every animal and description of carriage or other contrivance used, or capable of being used, as a means of transportation on land or through the air.

§ 7301. PROPERTY SUBJECT TO TAX

(a) *Taxable articles*

Any property on which, or for or in respect whereof, any tax is imposed by this title which shall be found in the possession or custody or within the control of any person, for the purpose of being sold or removed by him in fraud of the internal revenue laws, or with design to avoid payment of such tax, or which is removed,

*This section is applicable only to beer and brewing violations. See also 26 U.S.C. 5611.

deposited, or concealed, with intent to defraud the United States of such tax or any part thereof, may be seized, and shall be forfeited to the United States.

(*b*) *Raw materials*

All property found in the possession of any person intending to manufacture the same into property of a kind subject to tax for the purpose of selling such taxable property in fraud of the internal revenue laws, or with design to evade the payment of such tax, may also be seized, and shall be forfeited to the United States.

(*c*) *Equipment*

All property whatsoever, in the place or building, or any yard or enclosure, where the property described in subsection (a) or (b) is found, or which is intended to be used in the making of property described in subsection (a), with intent to defraud the United States of tax or any part thereof, on the property described in subsection (a) may also be seized, and shall be forfeited to the United States.

(*d*) *Packages*

All property used as a container for, or which shall have contained, property described in subsection (a) or (b) may also be seized, and shall be forfeited to the United States.

(*e*) *Conveyances*

Any property (including aircraft, vehicles, vessels, or draft animals) used to transport or for the deposit or concealment of property described in subsection (a) or (b), or any property used to transport or for the deposit or concealment of property which is intended to be used in the making or packaging or property described in subsection (a), may also be seized, and shall be forfeited to the United States.

§ 7302. PROPERTY USED IN VIOLATION OF INTERNAL REVENUE LAWS

It shall be unlawful to have or possess any property intended for use in violating the provisions of the internal revenue laws, or regulations prescribed under such laws, or which has been so used, and no property rights shall exist in any such property. A search warrant may issue as provided in chapter 205 of title 18 of the United States Code and the Federal Rules of Criminal Procedure for the seizure of such property. Nothing in this section shall in any manner limit or affect any criminal or forfeiture provision of the internal revenue laws, or of any other law. The seizure and forfeiture of any property under the provisions of this section and the disposition of such property subsequent to seizure and forfeiture, or the disposition of the proceeds from the sale of such property, shall be in accordance with existing laws or those hereafter in existence relating to seizures, forfeitures, and disposition of property or proceeds, for violation of the internal revenue laws.

5. TITLE 28

Section 2465 of the Judiciary and Judicial Procedure Act of June 25, 1948, 62 Stat. 975, as amended, 28 U.S.C. 2465, provides as follows:

§ 2465. RETURN OF PROPERTY TO CLAIMANT; CERTIFICATE OF REASONABLE CAUSE; LIABILITY FOR WRONGFUL SEIZURE

Upon the entry of judgment for the claimant in any proceeding to condemn or forfeit property seized under any Act of Congress, such property shall be returned forthwith to the claimant or his agent; but if it appears that there was reasonable cause for the seizure, the court shall cause a proper certificate thereof to be entered and the claimant shall not, in such

case, be entitled to costs, nor shall the person who made the seizure, nor the prosecutor, be liable to suit or judgment on account of such suit or prosecution.

6. TITLE 49

Sections 1, 2 and 4 of the Act of August 9, 1939, 53 Stat. 1291, as amended, 49 U.S.C. 781, 782, and 784, provide as follows:

§ 781. UNLAWFUL USE OF VESSELS, VEHICLES, AND AIRCRAFTS; CONTRABAND ARTICLE DEFINED

(a) It shall be unlawful (1) to transport, carry, or convey any contraband article in, upon, or by means of any vessel, vehicle, or aircraft; (2) to conceal or possess any contraband article in or upon any vessel, vehicle, or aircraft, or upon the person of anyone in or upon any vessel, vehicle, or aircraft; or (3) to use any vessel, vehicle, or aircraft to facilitate the transportation, carriage, conveyance, concealment, receipt, possession, purchase, sale, barter, exchange, or giving away of any contraband article.

(b) As used in this section, the term "contraband article" means—

(1) Any narcotic drug which has been or is possessed with intent to sell or offer for sale in violation of any laws or regulations of the United States dealing therewith; or which has been acquired or is possessed, sold, transferred, or offered for sale, in violation of any laws of the United States dealing therewith; or which has been acquired by theft, robbery, or burglary and carried or transported within any Territory, possession, or the District of Columbia, or from any State, Territory, possession, the District of Columbia, or the Canal Zone, to another State, Territory, possession, the District of Columbia, or the Canal Zone; or which does

not bear appropriate tax-paid internal-revenue stamps as required by law or regulations;

(2) Any firearm, with respect to which there has been committed any violation of any provision of the National Firearms Act or any regulation issued pursuant thereto; or

(3) Any falsely made, forged, altered, or counterfeit coin or obligation or other security of the United States or of any foreign government; or any material or apparatus, or paraphernalia fitted or intended to be used, or which shall have been used, in the making of any such falsely made, forged, altered, or counterfeit coin or obligation or other security.

* * * * *

§ 782. SEIZURE AND FORFEITURE

Any vessel, vehicle, or aircraft which has been or is being used in violation of any provision of section 781 of this title, or in, upon, by means of which any violation of said section has taken or is taking place, shall be seized and forfeited: *Provided,* That no vessel, vehicle, or aircraft used by any person as a common carrier in the transaction of business as such common carrier shall be forfeited under the provisions of this chapter unless it shall appear that (1) in the case of a railway car or engine, the owner, or (2) in the case of any other such vessel, vehicle, or aircraft, the owner or the master of such vessel or the owner or conductor, driver, pilot, or other person in charge of such vehicle or aircraft was at the time of the alleged illegal act a consenting party or privy thereto: *Provided further,* That no vessel, vehicle, or aircraft shall be forfeited under the provisions of this chapter by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such vessel, vehicle, or aircraft was unlawfully in the possession of a person who acquired possession

thereof in violation of the criminal laws of the United States, or of any State.

§ 784. APPLICATION OF RELATED LAWS

All provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of vessels and vehicles for violation of the customs laws; the disposition of such vessels and vehicles or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this chapter, insofar as applicable and not inconsistent with the provisions hereof: *Provided,* That such duties as are imposed upon the collector of customs or any other person with respect to the seizure and forfeiture of vessels and vehicles under the customs laws shall be performed with respect to seizures and forfeitures of vessels, vehicles, and aircraft under this chapter by such officers, agents, or other persons as may be authorized or designated for that purpose by the Secretary of the Treasury.

U.S. GOVERNMENT PRINTING OFFICE: 1974

Syllabus

CALERO-TOLEDO ET AL. *v.* PEARSON YACHT LEASING CO.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

No. 73–157. Argued January 7, 1974—Decided May 15, 1974

A pleasure yacht, which appellee had leased to Puerto Rican residents, was seized, pursuant to Puerto Rican statutes providing for forfeiture of vessels used for unlawful purposes, without prior notice to appellee or the lessees and without a prior adversary hearing, after authorities had discovered marihuana aboard her. Appellee was neither involved in nor aware of the lessees' wrongful use of the yacht. Appellee then brought suit challenging the constitutionality of the statutory scheme. A three-judge District Court, relying principally on *Fuentes* v. *Shevin*, 407 U. S. 67, held that the statutes' failure to provide for preseizure notice and hearing rendered them unconstitutional and that, as applied to forfeit appellee's interest in the yacht, they unconstitutionally deprived an innocent party of property without just compensation. *Held:*

1. The statutes of Puerto Rico are "State statute[s]" for purposes of the Three-Judge Court Act, and hence a three-judge court was properly convened under that Act and direct appeal to this Court was proper under 28 U. S. C. § 1253. Pp. 669–676.

2. This case presents an "extraordinary" situation in which postponement of notice and hearing until after seizure did not deny due process, since (1) seizure under the statutes serves significant governmental purposes by permitting Puerto Rico to assert *in rem* jurisdiction over the property in forfeiture proceedings, thereby fostering the public interest in preventing continued illicit use of the property and in enforcing criminal sanctions; (2) preseizure notice and hearing might frustrate the interests served by the statutes, the property seized often being of the sort, as here, that could be removed from the jurisdiction, destroyed, or concealed, if advance notice were given; and (3), unlike the situation in *Fuentes* v. *Shevin*, *supra*, seizure is not initiated by self-interested private parties but by government officials. Pp. 676–680.

3. Statutory forfeiture schemes are not rendered unconstitutional because of their applicability to the property interests of innocents, and here the Puerto Rican statutes, which further punitive and deterrent purposes, were validly applied to appellee's yacht. Pp. 680–690.

363 F. Supp. 1337, reversed.

BRENNAN, J., delivered the opinion of the Court, in which BURGER, C. J., and WHITE, MARSHALL, BLACKMUN, POWELL, and REHNQUIST, JJ., joined, and in Parts I and II of which STEWART, J., joined. WHITE, J., filed a concurring opinion, in which POWELL, J., joined, *post*, p. 691. STEWART, J., filed a separate statement, *post*, p. 690. DOUGLAS, J., filed an opinion dissenting in part, in which STEWART, J., joined in part, *post*, p. 691.

Lynn R. Coleman argued the cause for appellants. With him on the brief were *Francisco de Jesus-Schuck*, Attorney General of Puerto Rico, and *Miriam Naviera de Rodon*, Solicitor General.

Gustavo A. Gelpi argued the cause and filed a brief for appellee.*

MR. JUSTICE BRENNAN delivered the opinion of the Court.

The question presented is whether the Constitution is violated by application to appellee, the lessor of a yacht, of Puerto Rican statutes providing for seizure and forfeiture of vessels used for unlawful purposes when (1) the yacht was seized without prior notice or hearing after allegedly being used by a lessee for an unlawful purpose, and (2) the appellee was neither involved in nor aware of the act of the lessee which resulted in the forfeiture.

**Solicitor General Bork, Assistant Attorney General Petersen, Deputy Solicitor General Frey, Gerald P. Norton, Jerome M. Feit,* and *Joseph S. Davies, Jr.*, filed a brief for the United States as *amicus curiae* urging reversal.

In March 1971, appellee, Pearson Yacht Leasing Co., leased a pleasure yacht to two Puerto Rican residents. Puerto Rican authorities discovered marihuana on board the yacht in early May 1972, and charged one of the lessees with violation of the Controlled Substances Act of Puerto Rico, P. R. Laws Ann., Tit. 24, § 2101 *et seq.* (Supp. 1973). On July 11, 1972, the Superintendent of Police seized the yacht pursuant to P. R. Laws Ann., Tit. 24, §§ 2512 (a)(4), (b) (Supp. 1973),[1] and Tit. 34, § 1722 (1971),[2] which provide that vessels used to

[1] Title 24, §§ 2512 (a)(4) and (b) provide:

"(a) The following shall be subject to forfeiture to the Commonwealth of Puerto Rico:

. . . . . .

"(4) All conveyances, including aircraft, vehicles, mount or vessels, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of property described in clauses (1) and (2) of this subsection;

. . . . . .

"(b) Any property subject to forfeiture under clause (4) of subsection (a) of this section shall be seized by process issued pursuant to Act No. 39, of June 4, 1960, as amended, known as the Uniform Vehicle, Mount, Vessel and Plane Seizure Act, sections 1721 and 1722 of Title 34."

[2] Title 34, § 1722, provides:

"Whenever any vehicle, mount, or other vessel or plane is seized . . . such seizure shall be conducted as follows:

"(a) The proceedings shall be begun by the seizure of the property by the Secretary of Justice, the Secretary of the Treasury or the Police Superintendent, through their delegates, policemen or other peace officers. The officer under whose authority the action is taken shall serve notice on the owner of the property seized or the person in charge thereof or any person having any known right or interested therein, of the seizure and of the appraisal of the properties so seized, said notice to be served in an authentic manner, within ten (10) days following such seizure and such notice shall be understood to have been served upon the mailing thereof with return receipt requested. The owners, persons in charge, and

transport, or to facilitate the transportation of, controlled substances, including marihuana, are subject to seizure and forfeiture to the Commonwealth

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other persons having a known interest in the property so seized may challenge the confiscation within the fifteen (15) days following the service of the notice on them, through a complaint against the officer under whose authority the confiscation has been made, on whom notice shall be served, and which complaint shall be filed in the Part of the Superior Court corresponding to the place where the seizure was made and shall be heard without subjection to docket. All questions that may arise shall be decided and all other proceedings shall be conducted as in an ordinary civil action. Against the judgment entered no remedy shall lie other than a certiorari before the Supreme Court, limited to issues of law. The filing of such complaint within the period herein established shall be considered a jurisdictional prerequisite for the availing of the action herein authorized.

"(b) Every vehicle, mount, or any vessel or plane so seized shall be appraised as soon as taken possession of by the officer under whose authority the seizure took place, or by his delegate, with the exception of motor vehicles, which shall be placed under the custody of the Office of Transportation of the Commonwealth of Puerto Rico, which shall appraise same immediately upon receipt thereof.

"In the event of a judicial challenge of the seizure, the court shall, upon request of the plaintiff and after hearing the parties, determine the reasonableness of the appraisal as an incident of the challenge.

"Within ten (10) days after the filing of the challenge, the plaintiff shall have the right to give bond in favor of the Commonwealth of Puerto Rico before the pertinent court's clerk to the satisfaction of the court, for the amount of the assessed value of the seized property, which bond may be in legal tender, by certified check, hypothecary debentures, or by insurance companies. Upon the acceptance of the bond, the court shall direct that the property be returned to the owner thereof. In such case, the provisions of the following paragraphs (c), (d) and (e) shall not apply.

"When bond is accepted the subsequent substitution of the seized property in lieu of the bond shall not be permitted, said bond to answer for the seizure if the lawfulness of the latter is upheld, and the court shall provide in the resolution issued to that effect, for

of Puerto Rico. The vessel was seized without prior notice to appellee or either lessee and without a prior adversary hearing. The lessee, who had registered the yacht with the Ports Authority of the Commonwealth, was thereafter given notice within 10 days of the

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the summary forfeiture execution of said bond by the clerk of the court and for the covering of such bond into the general funds of the Government of Puerto Rico in case it may be in legal tender or by certified check; the hypothecary debentures or debentures of insurance companies shall be transmitted by the pertinent clerk of the court to the Secretary of Justice for execution.

"(c) After fifteen (15) days have elapsed since service of notice of the seizure without the person or persons with interest in the property seized have [*sic*] filed the corresponding challenge, or after twenty-five (25) days have elapsed since service of notice of the seizure without the court's having directed that the seized property be returned on account of the bond to that effect having been given, the officer under whose authority the seizure took place, the delegate thereof, or the Office of Transportation, as the case may be, may provide for the sale at auction of the seized property, or may set the same aside for official use of the Government of Puerto Rico. In case the seized property cannot be sold at auction or set aside for official use of the Government, the property may be destroyed by the officer in charge, setting forth in a minute which he shall draw up for the purpose, the description of the property, the reasons for its destruction and the date and place where it is destroyed, and he shall serve notice with a copy thereof on the Secretary of Justice.

"(d) In case the vehicle, mount, or vessel or plane is sold at auction, the proceeds from the sale shall be covered into the general fund of the Government of Puerto Rico, after deducting and reimbursing expenses incurred.

"(e) If the seizure is judicially challenged and the court declares same illegal, the Secretary of the Treasury of Puerto Rico shall, upon presentation of a certified copy of the final decision or judgment of the court, pay to the challenger the amount of the appraisal or the proceeds from the public auction sale of such property, whichever sum is the highest, plus interest thereon at the rate of 6% per annum, counting from the date of the seizure."

seizure, as required by § 1722 (a).[3] But when a challenge to the seizure was not made within 15 days after service of the notice, the yacht was forfeited for official use of the Government of Puerto Rico pursuant to § 1722 (c).[4] Appellee shortly thereafter first learned of the seizure and forfeiture when attempting to repossess the yacht from the lessees, because of their apparent failure to pay rent. It is conceded that appellee was "in no way . . . involved in the criminal enterprise carried on by [the] lessee" and "had no knowledge that its property was being used in connection with or in violation of [Puerto Rican Law]."

On November 6, 1972, appellee filed this suit, seeking a declaration that application of P. R. Laws Ann., Tit. 24, §§ 2512 (a)(4), (b), and Tit. 34, § 1722, had (1) unconstitutionally denied it due process of law insofar as the statutes authorized appellants, the Superintendent of Police and the Chief of the Office of Transportation of the Commonwealth, to seize the yacht without notice or a prior adversary hearing, and (2) unconstitutionally deprived appellee of its property without just compensation.[5] Injunctive relief was also sought.

[3] P. R. Laws Ann., Tit. 23, §§ 451 (e), 451b, and 451c, provide that no person shall "operate or give permission for the operation of" a vessel in Commonwealth waters without registering his interest in the vessel. Only the lessees had registered the yacht, and this led the District Court to conclude that "[f]rom the record in this case, we are not disposed to rule that the Commonwealth of Puerto Rico did not have reason to believe that [postseizure] notice to the owner was, in fact, given." 363 F. Supp. 1337, 1342 (PR 1973). Appellee does not contest this ruling.

[4] It is agreed that the yacht was appraised at a value of $19,800, and that the Chief of the Office of Transportation of the Commonwealth purports to maintain possession of the yacht as legal owner.

[5] Unconstitutionality of the statutes was alleged under both the Fifth and Fourteenth Amendments. The District Court deemed it unnecessary to determine which Amendment applied to Puerto Rico,

A three-judge District Court,[6] relying principally upon *Fuentes* v. *Shevin*, 407 U. S. 67 (1972), held that the failure of the statutes to provide for preseizure notice and hearing rendered them constitutionally defective. 363 F. Supp. 1337, 1342–1343 (PR 1973). Viewing *United States* v. *United States Coin & Currency*, 401 U. S. 715 (1971), as having effectively overruled our prior decisions that the property owner's innocence has no constitutional significance for purposes of forfeiture, the District Court further declared that the Puerto Rican statutes, insofar as applied to forfeit appellee's interest in the yacht, unconstitutionally deprived it of property without just compensation. 363 F. Supp., at 1341–1342. Appellants were accordingly enjoined from enforcing the statutes "insofar as they deny the owner or person in charge of property an opportunity for a hearing due to the lack of notice, before the seizure and forfeiture of its property and insofar as a penalty is imposed upon innocent parties." *Id.*, at 1343–1344. We noted probable jurisdiction. 414 U. S. 816 (1973). We reverse.

I

Although the parties consented to the convening of the three-judge court and hence do not challenge our juris-

see *Fornaris* v. *Ridge Tool Co.*, 400 U. S. 41, 43–44 (1970), and we agree. The Joint Resolution of Congress approving the Constitution of the Commonwealth of Puerto Rico, subjects its government to "the applicable provisions of the Constitution of the United States," 66 Stat. 327, and "there cannot exist under the American flag any governmental authority untrammeled by the requirements of due process of law as guaranteed by the Constitution of the United States." *Mora* v. *Mejías*, 206 F. 2d 377, 382 (CA1 1953) (Magruder, C. J.). See 48 U. S. C. § 737.

[6] Appellants initially opposed the convening of a three-judge court, arguing that the District Court should abstain. After a hearing, appellants withdrew their opposition and consented to the convening of a three-judge court.

diction to decide this direct appeal, we nevertheless may not entertain the appeal under 28 U. S. C. § 1253 [7] unless statutes of Puerto Rico are "State statute[s]" for purposes of the Three-Judge Court Act, 28 U. S. C. § 2281.[8] We therefore turn first to that question.

In *Stainback* v. *Mo Hock Ke Lok Po*, 336 U. S. 368 (1949), this Court held that enactments of the Territory of Hawaii were not "State statute[s]" for purposes of Judicial Code § 266, the predecessor to 28 U. S. C. § 2281, reasoning:

> "While, of course, great respect is to be paid to the enactments of a territorial legislature by all courts as it is to the adjudications of territorial courts, the predominant reason for the enactment of Judicial Code § 266 does not exist as respects territories. *This reason was a congressional purpose to avoid unnecessary interference with the laws of a sovereign state.* In our dual system of government, the position of the state as sovereign over matters not ruled by the Constitution requires a deference to state

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[7] That section provides:

"Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding *required by any Act of Congress to be heard and determined by a district court of three judges.*" (Emphasis added.)

[8] That section provides:

"An interlocutory or permanent injunction restraining the enforcement, operation or execution of any *State statute* by restraining the action of any officer of such State in the enforcement or exceution of such statute or of an order made by an administrative board or commission acting under State statutes, shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title." (Emphasis added.)

> legislative action beyond that required for the laws of a territory. A territory is subject to congressional regulation." 336 U. S., at 377–378 (footnotes omitted) (emphasis added).

Similar reasoning—that the purpose of insulating a sovereign State's laws from interference by a single judge would not be furthered by broadly interpreting the word "State"—led the Court of Appeals for the First Circuit some 55 years ago to hold § 266 inapplicable to the laws of the Territory of Puerto Rico. *Benedicto* v. *West India & Panama Tel. Co.*, 256 F. 417 (1919).

Congress, however, created the Commonwealth of Puerto Rico after *Benedicto* was decided. Following the Spanish-American War, Puerto Rico was ceded to this country in the Treaty of Paris, 30 Stat. 1754 (1898). A brief interlude of military control was followed by congressional enactment of a series of Organic Acts for the government of the island. Initially these enactments established a local governmental structure with high officials appointed by the President. These Acts also retained veto power in the President and Congress over local legislation. By 1950, however, pressures for greater autonomy led to congressional enactment of Pub. L. 600, 64 Stat. 319, which offered the people of Puerto Rico a compact whereby they might establish a government under their own constitution. Puerto Rico accepted the compact, and on July 3, 1952, Congress approved, with minor amendments, a constitution adopted by the Puerto Rican populace, 66 Stat. 327; see note accompanying 48 U. S. C. § 731d. Pursuant to that constitution the Commonwealth now "elects its Governor and legislature; appoints its judges, all cabinet officials, and lesser officials in the executive branch; sets its own educational policies; determines its own budget; and amends its own civil and criminal code." Leibowitz, The Applicability of Fed-

eral Law to the Commonwealth of Puerto Rico, 56 Geo. L. J. 219, 221 (1967); see 28 Dept. of State Bull. 584–589 (1953); *Americana of Puerto Rico, Inc.* v. *Kaplus*, 368 F. 2d 431 (CA3 1966); Magruder, The Commonwealth Status of Puerto Rico, 15 U. Pitt. L. Rev. 1 (1953).

These significant changes in Puerto Rico's governmental structure formed the backdrop to Judge Magruder's observations in *Mora* v. *Mejias*, 206 F. 2d 377 (CA1 1953):

> "[I]t may be that the Commonwealth of Puerto Rico—'El Estado Libre Asociado de Puerto Rico' in the Spanish version—organized as a body politic by the people of Puerto Rico under their own constitution, pursuant to the terms of the compact offered to them in Pub. L. 600, and by them accepted, is a State within the meaning of 28 U. S. C. § 2281. The preamble to this constitution refers to the Commonwealth . . . which 'in the exercise of our natural rights, we [the people of Puerto Rico] now create within our union with the United States of America.' Puerto Rico has thus not become a State in the federal Union like the 48 States, but it would seem to have become a State within a common and accepted meaning of the word. Cf. *State of Texas* v. *White*, 1868, 7 Wall. 700, 721. . . . It is a political entity created by the act and with the consent of the people of Puerto Rico and joined in union with the United States of America under the terms of the compact.
>
> "A serious argument could therefore be made that the Commonwealth of Puerto Rico is a State within the intendment and policy of 28 U. S. C. § 2281. . . . If the constitution of the Commonwealth of Puerto Rico is really a 'constitution'—as the Congress says it is, 66 Stat. 327,—and not just another Organic

> Act approved and enacted by the Congress, then the question is whether the Commonwealth of Puerto Rico is to be deemed 'sovereign over matters not ruled by the Constitution' of the United States and thus a 'State' within the policy of 28 U. S. C. § 2281, which enactment, in prescribing a three-judge federal district court, expresses 'a deference to state legislative action beyond that required for the laws of a territory' [*Stainback* v. *Mo Hock Ke Lok Po*, 336 U. S., at 378] whose local affairs are subject to congressional regulation." 206 F. 2d, at 387–388 (footnote omitted).

Lower federal courts since 1953 have adopted this analysis and concluded that Puerto Rico is to be deemed "sovereign over matters not ruled by the Constitution" and thus a State within the policy of the Three-Judge Court Act. See *Mora* v. *Mejías*, 115 F. Supp. 610 (PR 1953);[9] *Marin* v. *University of Puerto Rico*, 346 F.

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[9] The court in *Mora* quoted from the statement of the United States to the Secretary General of the United Nations explaining its decision to cease transmission of information concerning Puerto Rico under Art. 73 (e) of the United Nations Charter, which requires the communication of certain technical information by countries responsible for administering territories whose people have not yet attained a full measure of self-government, 115 F. Supp., at 612:

" 'By the various actions taken by the Congress and the people of Puerto Rico, Congress has agreed that Puerto Rico shall have, under that Constitution, freedom from control or interference by the Congress in respect of internal government and administration, subject only to compliance with applicable provisions of the Federal Constitution, the Puerto Rican Federal Relations Act and the acts of Congress authorizing and approving the Constitution, as may be interpreted by Judicial decision. Those laws which directed or authorized interference with matters of local government by the Federal Government have been repealed.' "

28 Dept. of State Bull. 584, 587 (1953). But cf. Note, Puerto Rico; Colony or Commonwealth? 6 N. Y. U. J. Int'l L. & P. 115 (1973).

Supp. 470, 481 (PR 1972); *Suarez* v. *Administrador Del Deporte Hipico de Puerto Rico*, 354 F. Supp. 320 (PR 1972). And in *Wackenhut Corp.* v. *Aponte*, 386 U. S. 268 (1967), we summarily affirmed the decision of a three-judge court for the District of Puerto Rico that had ordered abstention and said:

> "[A]pplication of the doctrine of abstention is particularly appropriate in a case . . . involv[ing] the construction and validity of a statute of the Commonwealth of Puerto Rico. For a due regard for the status of that Commonwealth under its compact with the Congress of the United States dictates, we believe, that it should have the primary opportunity through its courts to determine the intended scope of its own legislation and to pass upon the validity of that legislation under its own constitution as well as under the Constitution of the United States." 266 F. Supp. 401, 405 (1966).

Although the question of Puerto Rico's status under 28 U. S. C. § 2281 was raised in neither the Jurisdictional Statement nor the Motion to Affirm in *Wackenhut*, and we do not normally feel ourselves bound by a *sub silentio* exercise of jurisdiction, see *Hagans* v. *Lavine*, 415 U. S. 528, 533–535, n. 5 (1974); *United States* v. *More*, 3 Cranch 159, 172 (1805), this Court has noted that in three-judge court cases, "where . . . the responsibility [is] on the courts to see that the three-judge rule [is] followed," unexplained action may take on added significance. *Stainback* v. *Mo Hock Ke Lok Po*, 336 U. S., at 379–380. This is particularly so, when as in *Wackenhut*, the opinion supporting the judgment over which we exercised appellate jurisdiction had expressed the view that abstention was appropriate for reasons of comity, an oft-repeated justification for the abstention doctrine, see, *e. g.*, *Railroad Comm'n of Texas* v. *Pullman Co.*, 312 U. S.

496, 500 (1941),[10] as well as the principal underpinning of the Three-Judge Court Act. See *Steffel* v. *Thompson*, 415 U. S. 452, 465–466 (1974).

While still of the view that § 2281 is not "a measure of broad social policy to be construed with great liberality," *Phillips* v. *United States*, 312 U. S. 246, 251 (1941), we believe that the established federal judicial practice of treating enactments of the Commonwealth of Puerto Rico as "State statute[s]" for purposes of the Three-Judge Court Act, serves, and does not expand, the purposes of § 2281. We therefore hold that a three-judge court was properly convened under that statute,[11] and that direct

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[10] See also H. Friendly, Federal Jurisdiction: A General View 93 (1973).

[11] *Fornaris* v. *Ridge Tool Co.*, 400 U. S. 41 (1970), does not militate against this holding. There, we held that a Puerto Rican statute was not a "State statute" within 28 U. S. C. § 1254 (2), which permits appeals from judgments of federal courts of appeals holding *state* statutes unconstitutional. We noted that 28 U. S. C. § 1258, requiring that we permit final judgments of the Supreme Court of the Commonwealth of Puerto Rico to be reviewed by appeal or by certiorari, directly corresponded to the provisions of 28 U. S. C. § 1257 providing for review of final judgments of "state" courts. Since no parallel provision was added to § 1254 (2) to permit appeals from the courts of appeals holding Puerto Rican statutes unconstitutional, we said:

"Whether the omission was by accident or by design, our practice of strict construction of statutes authorizing appeals dictates that we not give an expansive interpretation to the word 'State.'" 400 U. S., at 42 n. 1.

This conclusion seems compelled by the history of the close relationship between 28 U. S. C. § 1254 (2) and 28 U. S. C. § 1257. In the Judiciary Act of 1789, 1 Stat. 73, 85–86, final decisions of state courts sustaining state statutes against challenges under the Federal Constitution were subjected to review by this Court on writ of error. See *King Mfg. Co.* v. *City Council of Augusta*, 277 U. S. 100 (1928). But prior to 1925, there was no appeal from "final" judgments of the federal circuit courts. See 36 Stat. 1157 (1911). When con-

appeal to this Court was proper under 28 U. S. C. § 1253. Accordingly, we now turn to the merits.

II

Appellants challenge the District Court's holding that the appellee was denied due process of law by the omis-

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sideration was being given to amendment of the Judiciary Act in 1924 and 1925

"[a]ttention was drawn to the disparity between the want of obligatory review over [decisions of the circuit courts involving the constitutionality of state statutes] and the existence of obligatory jurisdiction over a similar class of cases in the state courts. Senator Copeland rehearsed before the Senate correspondence he had had on this point with the Chief Justice, who had urged that if it was desirable to put the circuit courts of appeals on the same level with the state courts, it would be better to withdraw review as of right from the state courts and subject the decisions of both the state courts and the circuit courts solely to a discretionary review by the Supreme Court, rather than to allow obligatory review over all constitutional cases from both courts. The Chief Justice, however, justified the proposed discrimination on the ground that a circuit court of appeals in deciding a federal constitutional question 'would be more likely to preserve the Federal view of the issue than the State court, at least to an extent to justify making a review of its decision by our court conditional upon our approval.' However, an amendment prevailed which met this discrimination by allowing writ of error to the circuit courts of appeals in cases sustaining a constitutional claim against a state statute. The argument advanced by the Chief Justice thus became the basis for a new development of the principle which since 1789 had been the basis of Supreme Court review of the highest courts of the states. Due to the belief that the state courts would be more jealous of local rights than of federal claims, review had lain as of right where the constitutional claim was advanced and denied. Now, due to the belief . . . that the federal court would sustain constitutional claims as opposed to the local right, review was provided from the circuit courts of appeals where the constitutional claim was advanced and allowed. Thereby, the Senate 'intended to put the two on a perfect parity, allowing a writ of error from the circuit court of appeals under

sion from § 2512 (b), as it incorporates § 1722, of provisions for preseizure notice and hearing. They argue that seizure for purposes of forfeiture is one of those " 'extraordinary situations' that justify postponing notice and opportunity for a hearing." *Fuentes* v. *Shevin*, 407 U. S., at 90; see *Sniadach* v. *Family Finance Corp.*, 395 U. S. 337, 339 (1969); *Boddie* v. *Connecticut*, 401 U. S. 371, 378–379 (1971). We agree.[12]

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conditions exactly the same, except reversed, and allowing a writ of certiorari in the one case as in the other case, so that the two would be entirely harmonious.' " F. Frankfurter & J. Landis, The Business of the Supreme Court 277–278 (1928) (footnotes omitted).

Thus, against that background, when Congress made § 1258 only a counterpart of § 1257, there could be no basis for an expansive reading of the word "State" in § 1254 (2), in the absence of its congressional amendment.

We have no occasion to address the question whether Puerto Rico is a "State" for purposes of 28 U. S. C. § 1343, a jurisdictional basis of appellee's complaint. Since the complaint and lease agreement, as incorporated, fairly read, leave little doubt that the matter in controversy exceeds $10,000 and arises under the Constitution of the United States, there is jurisdiction under 28 U. S. C. § 1331.

[12] Appellants also argue that the seizure did not result in any injury to appellee that constituted failure of preseizure notice and hearing a denial of due process. This is so, they contend, because the lease gave the lessees exclusive right to possession at the time of the seizure, and therefore appellee's nonpossessory interest was adequately protected by the statutory provisions for a post-seizure hearing. But the lease provides that lessees' failure, *inter alia*, within 15 days after notice from appellee to pay arrears of rent or use the yacht solely for legal purposes would establish a default entitling appellee to possession. Whether a default had in fact occurred between May 6, 1972, when a lessee was first accused of a narcotics violation, and the date of seizure, July 11, 1972, is not clear from the record, although it is clear that appellee did not attempt to repossess the yacht until October 19, 1972.

Since, however, our holding is that preseizure notice and hearing are not required by due process in the context of this forfeiture,

In holding that lack of preseizure notice and hearing denied due process, the District Court relied primarily upon our decision in *Fuentes* v. *Shevin, supra*. *Fuentes* involved the validity of Florida and Pennsylvania replevin statutes permitting creditors to seize goods allegedly wrongfully detained. A writ of replevin could be obtained under the Florida statute upon the creditor's bare assertion to a court clerk that he was entitled to the property, and under the Pennsylvania statute, upon filing an affidavit fixing the value of the property, without alleging legal entitlement to the property. *Fuentes* held that the statutory procedures deprived debtors of their property without due process by failing to provide for hearings " 'at a meaningful time.' " 407 U. S., at 80.

Fuentes reaffirmed, however, that, in limited circumstances, immediate seizure of a property interest, without an opportunity for prior hearing, is constitutionally permissible. Such circumstances are those in which

> "the seizure has been directly necessary to secure an important governmental or general public interest. Second, there has been a special need for very prompt action. Third, the State has kept strict control over its monopoly of legitimate force: the person initiating the seizure has been a government official responsible for determining, under the standards of a narrowly drawn statute, that it was necessary and justified in the particular instance." *Id.*, at 91.

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we have no occasion to remand for a determination (1) whether the company had an immediate, but as yet unexercised, right to possession on the date of seizure or merely a right to collect rents, together with a reversionary interest, and (2) whether either or both of these property interests would be of sufficient significance to require that the company be given an advance opportunity to contest the seizure. Cf. *Fuentes* v. *Shevin*, 407 U. S. 67, 86–87 (1972).

Thus, for example, due process is not denied when postponement of notice and hearing is necessary to protect the public from contaminated food, *North American Storage Co.* v. *Chicago*, 211 U. S. 306 (1908); from a bank failure, *Coffin Bros. & Co.* v. *Bennett*, 277 U. S. 29 (1928); from misbranded drugs, *Ewing* v. *Mytinger & Casselberry, Inc.*, 339 U. S. 594 (1950); to aid the collection of taxes, *Phillips* v. *Commissioner*, 283 U. S. 589 (1931); or to aid the war effort, *United States* v. *Pfitsch*, 256 U. S. 547 (1921).

The considerations that justified postponement of notice and hearing in those cases are present here. First, seizure under the Puerto Rican statutes serves significant governmental purposes: Seizure permits Puerto Rico to assert *in rem* jurisdiction over the property in order to conduct forfeiture proceedings,[13] thereby fostering the public interest in preventing continued illicit use of the property and in enforcing criminal sanctions. Second, preseizure notice and hearing might frustrate the interests served by the statutes, since the property seized—as here, a yacht—will often be of a sort that could be removed to another jurisdiction, destroyed, or concealed, if advance warning of confiscation were given. And finally, unlike the situation in *Fuentes*, seizure is not initiated by self-interested private parties; rather, Commonwealth officials determine whether seizure is appropriate under the provisions of the Puerto Rican statutes.[14] In these circumstances, we hold that this case

[13] Cf. *Ownbey* v. *Morgan*, 256 U. S. 94 (1921), cited with approval in *Fuentes* v. *Shevin*, *supra*, at 91 n. 23.

[14] *Fuentes* expressly distinguished seizure under a search warrant from seizure under a writ of replevin:

"First, a search warrant is generally issued to serve a highly important governmental need—*e. g.*, the apprehension and conviction of criminals—rather than the mere private advantage of a private party in an economic transaction. Second, a search warrant is

presents an "extraordinary" situation in which postponement of notice and hearing until after seizure did not deny due process.[15]

III

Appellants next argue that the District Court erred in holding that the forfeiture statutes unconstitutionally authorized the taking for government use of innocent parties' property without just compensation. They urge that a long line of prior decisions of this Court establish the principle that statutory forfeiture schemes are not rendered unconstitutional because of their applicability to the property interests of innocents, and further that *United States* v. *United States Coin & Currency*, 401 U. S. 715 (1971), did not—contrary to the opinion of the District Court—overrule those prior precedents *sub silentio*. We agree. The historical background of forfeiture statutes in this country and this Court's prior decisions sustaining their constitutionality lead to that conclusion.

At common law the value of an inanimate object directly or indirectly causing the accidental death of a

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generally issued in situations demanding prompt action. The danger is all too obvious that a criminal will destroy or hide evidence or fruits of his crime if given any prior notice. Third, the Fourth Amendment guarantees that the State will not issue search warrants merely upon the conclusory application of a private party. It guarantees that the State will not abdicate control over the issuance of warrants and that no warrant will be issued without a prior showing of probable cause." 407 U. S., at 93–94, n. 30.

We have no occasion to address the question whether the Fourth Amendment warrant or probable-cause requirements are applicable to seizures under the Puerto Rican statutes.

[15] No challenge is made to the District Court's determination that the form of postseizure notice satisfied due process requirements. See n. 3, *supra*. Notice, of course, was required to be " 'reasonably calculated' to apprise [the company] of the pendency of the forfeiture proceedings." *Robinson* v. *Hanrahan*, 409 U. S. 38, 40 (1972).

King's subject was forfeited to the crown as a deodand.[16] The origins of the deodand are traceable to Biblical[17] and pre-Judeo-Christian practices, which reflected the view that the instrument of death was accused and that religious expiation was required. See O. Holmes, The Common Law, c. 1 (1881). The value of the instrument was forfeited to the King, in the belief that the King would provide the money for Masses to be said for the good of the dead man's soul, or insure that the deodand was put to charitable uses. 1 W. Blackstone, Commentaries *300.[18] When application of the deodand to religious or eleemosynary purposes ceased, and the deodand became a source of crown revenue, the institution was justified as a penalty for carelessness.[19]

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[16] Deodand derives from the Latin *Deo dandum,* "to be given to God."

[17] See Exodus 21:28 ("[i]f an ox gore a man or a woman, and they die, he shall be stoned: and his flesh shall not be eaten").

[18] See 1 M. Hale, Pleas of the Crown 419, 423–424 (1st Am. ed. 1847); 2 F. Pollock & F. Maitland, History of English Law 473 (2d ed. 1909); Law of Deodands, 34 Law Mag. 188, 189 (1845); Finkelstein, The Goring Ox: Some Historical Perspectives on Deodands, Forfeitures, Wrongful Death and the Western Notion of Sovereignty, 46 Temp. L. Q. 169, 182 (1973).

[19] See Hale, n. 18, *supra,* at 424. Indeed, the abolition of the deodand institution in England in 1846, 9 & 10 Vict. c. 62, went hand in hand with the passage of Lord Campbell's Act creating a cause of action for wrongful death, 9 & 10 Vict. c. 93 (1846). Passage of the two bills was linked, because Lord Campbell was unwilling to eliminate the deodand institution, with its tendency to deter carelessness, particularly by railroads, unless a right of action was granted to the dead man's survivors. See 77 Hansard's Parliamentary Debates, Third Series 1031 (1845). See generally Finkelstein, n. 18, *supra,* at 170–171.

The adaptation of the deodand institution to serve the more contemporary function of deterrence is an example of a phenomenon discussed by Mr. Justice Holmes:

"The customs, beliefs, or needs of a primitive time establish a rule or a formula. In the course of centuries the custom, belief, or

Forfeiture also resulted at common law from conviction for felonies and treason. The convicted felon forfeited his chattels to the Crown and his lands escheated to his lord; the convicted traitor forfeited all of his property, real and personal, to the Crown. See 3 W. Holdsworth, History of English Law 68–71 (3d ed. 1927); 1 F. Pollock & F. Maitland, History of English Law 351 (2d ed. 1909). The basis for these forfeitures was that a breach of the criminal law was an offense to the King's peace, which was felt to justify denial of the right to own property. See 1 W. Blackstone, Commentaries *299.[20]

In addition, English Law provided for statutory forfeitures of offending objects used in violation of the customs and revenue laws—likely a product of the confluence and merger of the deodand tradition and the belief that the right to own property could be denied the wrongdoer. Statutory forfeitures were most often enforced under the *in rem* procedure utilized in the Court of Exchequer to forfeit the property of felons. See 3 W. Blackstone, Commentaries *261–262; *C. J. Hendry Co.* v. *Moore,* 318 U. S. 133, 137–138 (1943).

Deodands did not become part of the common-law tradition of this country. See *Parker-Harris Co.* v. *Tate,* 135 Tenn. 509, 188 S. W. 54 (1916). Nor has forfeiture

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necessity disappears, but the rule remains. The reason which gave rise to the rule has been forgotten, and ingenious minds set themselves to inquire how it is to be accounted for. Some ground of policy is thought of, which seems to explain it and to reconcile it with the present state of things; and then the rule adapts itself to the new reasons which have been found for it, and enters on a new career. The old form receives a new content, and in time even the form modifies itself to fit the meaning which it has received." The Common Law 5 (1881).

[20] In 1870, England eliminated most forfeitures of those convicted of felonies or treason. 33 & 34 Vict. c. 23.

of estates as a consequence of federal criminal conviction been permitted, see 18 U. S. C. § 3563; Rev. Stat. § 5326 (1874); 1 Stat. 117 (1790). Forfeiture of estates resulting from a conviction for treason has been constitutionally proscribed by Art. III, § 3, though forfeitures of estates for the lifetime of a traitor have been sanctioned, see *Wallach* v. *Van Riswick*, 92 U. S. 202 (1876). But "[l]ong before the adoption of the Constitution the common law courts in the Colonies—and later in the states during the period of Confederation—were exercising jurisdiction *in rem* in the enforcement of [English and local] forfeiture statutes," *C. J. Hendry Co.* v. *Moore*, *supra*, at 139, which provided for the forfeiture of commodities and vessels used in violations of customs and revenue laws. See *id.*, at 145–148; *Boyd* v. *United States*, 116 U. S. 616, 623 (1886). And almost immediately after adoption of the Constitution, ships and cargoes involved in customs offenses were made subject to forfeiture under federal law,[21] as were vessels used to deliver slaves to foreign countries,[22] and somewhat later those used to deliver slaves to this country.[23] The enactment of forfeiture statutes has not abated; contemporary federal and state forfeiture statutes reach virtually any type of property that might be used in the conduct of a criminal enterprise.

Despite this proliferation of forfeiture enactments, the innocence of the owner of property subject to forfeiture has almost uniformly been rejected as a defense. Thus, Mr. Justice Story observed in *The Palmyra*, 12 Wheat. 1 (1827), that a conviction for piracy was not a prerequi-

[21] Act of July 31, 1789, §§ 12, 36, 1 Stat. 39, 47; see also Act of Aug. 4, 1790, §§ 13, 22, 27, 28, 67, 1 Stat. 157, 161, 163, 176.

[22] Act of Mar. 22, 1794, 1 Stat. 347.

[23] Act of Mar. 2, 1807, 2 Stat. 426.

site to a proceeding to forfeit a ship allegedly engaged in piratical aggression in violation of a federal statute:

> "It is well known, that at the common law, in many cases of felonies, the party forfeited his goods and chattels to the crown. The forfeiture did not, strictly speaking, attach *in rem;* but it was a part, or at least a consequence, of the judgment of conviction. . . . [T]he [crown's right to the goods and chattels] attached only by the conviction of the offender. . . . But this doctrine never was applied to seizures and forfeitures, created by statute, *in rem,* cognizable on the revenue side of the Exchequer. The thing is here primarily considered as the offender, or rather the offence is attached primarily to the thing; and this, whether the offence be *malum prohibitum,* or *malum in se* . . . . [T]he practice has been, and so this Court understand the law to be, that the proceeding *in rem* stands independent of, and wholly unaffected by any criminal proceeding *in personam.*" *Id.,* at 14–15.

This rationale was relied upon to sustain the statutory forfeiture of a vessel found to have been engaged in piratical conduct where the innocence of the owner was "fully established." *United States* v. *Brig Malek Adhel,* 2 How. 210, 238 (1844). The vessel was "treated as the offender," without regard to the owner's conduct, "as the only adequate means of suppressing the offence or wrong, or insuring an indemnity to the injured party." *Id.,* at 233.[24]

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[24] Thirty years earlier, the Court upheld a forfeiture of a quantity of coffee which had been transferred to bona fide purchasers after violation of the Non-Intercourse Act of 1809, upon reasoning that "[i]n the eternal struggle that exists between the avarice, enterprize and combinations of individuals on the one hand, and

Dobbins's Distillery v. *United States,* 96 U. S. 395 (1878), is an illustration of how severely this principle has been applied. That case involved a lessee's violations of the revenue laws which led to the seizure of real and personal property used in connection with a distillery. The lessor's assertions of innocence were rejected as a defense to a federal statutory forfeiture of his entire property, for the offense "attached primarily to the distillery, and the real and personal property used in connection with the same, without any regard whatsoever to the personal misconduct or responsibility of the owner, beyond what necessarily arises from the fact that he leased the property to the distiller, and suffered it to be occupied and used by the lessee as a distillery." *Id.*, at 401; see *United States* v. *Stowell,* 133 U. S. 1, 13–14 (1890).

Decisions reaching the same conclusion have continued into this century. In *Goldsmith-Grant Co.* v. *United States,* 254 U. S. 505 (1921), it was held that the federal tax-fraud forfeiture statute did not deprive an innocent owner of his property in violation of the Fifth Amendment. There, the claimant was a conditional vendor of a taxicab that had been used in the removal and concealment of distilled spirits upon which the federal tax was unpaid. Although recognizing that arguments against the application of the statute to cover an innocent owner were not without force, the Court rejected them, saying:

> "In breaches of revenue provisions some forms of property are facilities, and therefore it may be said, that Congress interposes the care and responsibility

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the power charged with the administration of the laws on the other, severe laws are rendered necessary to enable the executive to carry into effect the measure of policy adopted by the legislature." *United States* v. *1960 Bags of Coffee,* 8 Cranch 398, 405 (1814).

> of their owners in aid of the prohibitions of the law and its punitive provisions, by ascribing to the property a certain personality, a power of complicity and guilt in the wrong. In such case there is some analogy to the law of *deodand* by which a personal chattel that was the immediate cause of the death of any reasonable creature was forfeited. To the superstitious reason to which the rule was ascribed, Blackstone adds 'that such misfortunes are in part owing to the negligence of the owner, and therefore he is properly punished by such forfeiture.' . . .
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> "But whether the reason for [the forfeiture] be artificial or real, it is too firmly fixed in the punitive and remedial jurisprudence of the country to be now displaced." *Id.*, at 510–511.

See also *United States* v. *One Ford Coupe Automobile*, 272 U. S. 321 (1926) (Brandeis, J.); *General Motors Acceptance Corp.* v. *United States*, 286 U. S. 49 (1932) (Cardozo, J.). In *Van Oster* v. *Kansas*, 272 U. S. 465 (1926), the Court upheld, against a Fourteenth Amendment attack, a forfeiture under state law of an innocent owner's interest in an automobile that he had entrusted to an alleged wrongdoer. Judicial inquiry into the guilt or innocence of the owner could be dispensed with, the Court held, because state lawmakers, in the exercise of the police power, were free to determine that certain uses of property were undesirable and then establish "a secondary defense against a forbidden use . . . ." *Id.*, at 467.

Plainly, the Puerto Rican forfeiture statutes further the punitive and deterrent purposes that have been found sufficient to uphold, against constitutional challenge, the application of other forfeiture statutes to the property of innocents.[25] Forfeiture of conveyances that have been

[25] But for unimportant differences, P. R. Laws Ann., Tit. 24,

used—and may be used again—in violation of the narcotics laws fosters the purposes served by the underlying criminal statutes, both by preventing further illicit use of the conveyance and by imposing an economic penalty, thereby rendering illegal behavior unprofitable. See, *e. g.*, H. R. Rep. No. 1054, 76th Cong., 1st Sess. (1939); S. Rep. No. 926, 76th Cong., 1st Sess. (1939); H. R. Rep. No. 2751, 81st Cong., 2d Sess. (1950); S. Rep. No. 1755, 81st Cong., 2d Sess. (1950).[26] To the extent that

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§ 2512 (a) (Supp. 1973) is modeled after 21 U. S. C. § 881 (a). The latter section provides:

"(a) The following shall be subject to forfeiture to the United States and no property right shall exist in them:

. . . . .

"(4) All conveyances, including aircraft, vehicles, or vessels, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of property described in paragraph (1) or (2), except that—

"(A) no conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of this section unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of this subchapter or subchapter II of this chapter; and

"(B) no conveyance shall be forfeited under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or of any State. . . ."

See n. 1, *supra*. The exceptions contained in subparagraphs (A) and (B) of the federal statute, although having no specific counterpart in § 2512 (a) (4), have been judicially recognized by the Supreme Court of Puerto Rico. See *General Motors Acceptance Corp.* v. *Brañuela*, 61 P. R. R. 701 (1943); *Metro Taxicabs, Inc.* v. *Treasurer of Puerto Rico*, 73 P. R. R. 164 (1952); *Commonwealth* v. *Superior Court*, 94 P. R. R. 687 (1967).

[26] Seizure and forfeiture statutes also help compensate the Government for its enforcement efforts and provide methods for obtaining

such forfeiture provisions are applied to lessors, bailors, or secured creditors who are innocent of any wrongdoing, confiscation may have the desirable effect of inducing them to exercise greater care in transferring possession of their property. Cf. *United States* v. *One Ford Coach*, 307 U. S. 219, 238–241 (1939) (DOUGLAS, J., dissenting).

Against the legitimate governmental interests served by the Puerto Rican statute and the long line of this Court's decisions which squarely collide with appellee's assertion of a constitutional violation, the District Court opposed our decision in *United States* v. *United States Coin & Currency*, 401 U. S. 715 (1971). This reliance was misplaced. In *Coin & Currency*, the Government claimed that the privilege against self-incrimination could not be asserted in a forfeiture proceeding under 26 U. S. C. § 7302 by one in possession of money seized from him when used in an illegal bookmaking operation. In the Government's view, the proceeding was not "criminal" because the forfeiture was authorized without regard to the guilt or innocence of the owner of the money. The Court's answer was that § 7302, read in conjunction with 19 U. S. C. § 1618, manifested a clear intention "to impose a penalty only upon those who [were] significantly involved in a criminal enterprise," 401 U. S., at 721–722, and in that circumstance the privilege could be asserted in the forfeiture proceeding by the person from whom the money was taken. Thus, *Coin & Currency* did not overrule prior decisions that sustained application to innocents of forfeiture statutes, like the Puerto Rican statutes, not limited in application to persons "significantly involved in a criminal enterprise."

This is not to say, however, that the "broad sweep"

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security for subsequently imposed penalties and fines. See, *e. g.*, *One Lot Emerald Cut Stones* v. *United States*, 409 U. S. 232, 237 (1972).

of forfeiture statutes remarked in *Coin & Currency* could not, in other circumstances, give rise to serious constitutional questions. Mr. Chief Justice Marshall intimated as much over a century and a half ago in observing that "a forfeiture can only be applied to those cases in which the means that are prescribed for the prevention of a forfeiture may be employed." *Peisch* v. *Ware*, 4 Cranch 347, 363 (1808). It therefore has been implied that it would be difficult to reject the constitutional claim of an owner whose property subjected to forfeiture had been taken from him without his privity or consent. See, *id.*, at 364; *Goldsmith-Grant Co.* v. *United States*, 254 U. S., at 512; *United States* v. *One Ford Coupe Automobile*, 272 U. S., at 333; *Van Oster* v. *Kansas*, 272 U. S., at 467. Similarly, the same might be said of an owner who proved not only that he was uninvolved in and unaware of the wrongful activity, but also that he had done all that reasonably could be expected to prevent the proscribed use of his property; [27] for, in that circumstance, it

[27] The common law sought to mitigate the harshness of felony and deodand forfeitures. The writ of restitution was available to an individual whose goods were stolen by a thief and forfeited to the crown as a consequence of the thief's conviction. See 2 F. Pollock & F. Maitland, History of English Law 165–166 (2d ed. 1909); 3 W. Holdsworth, History of English Law 280 and n. 3 (3d ed. 1927). Mitigation with respect to deodands was less formalized:

"It seems also clear from the ancient authorities, that jurors always determined the amount of deodand to be imposed with great moderation, and with a due regard to the rights of property and the moral innocence of the party incurring the penalty. Our ancestors seem fully to have perceived the hardship of inflicting such penalty on one who had been guilty of no moral or indeed legal offence; and in all cases, therefore, where death was purely the result of accident, and not of negligence or carelessness, imposed a nominal fine, or found that only to be the deodand which by its immediate contact occasioned death." Law of Deodands, *supra*, n. 18, at 190.

Since 1790 the Federal Government has applied the ameliorative policy—first adopted in England, see *United States* v. *Morris*,

would be difficult to conclude that forfeiture served legitimate purposes and was not unduly oppressive. Cf. *Armstrong* v. *United States*, 364 U. S. 40, 49 (1960).

But in this case appellee voluntarily entrusted the lessees with possession of the yacht, and no allegation has been made or proof offered that the company did all that it reasonably could to avoid having its property put to an unlawful use. Cf. *Goldblatt* v. *Town of Hempstead*, 369 U. S. 590, 596 (1962). The judgment of the District Court is

Reversed.

MR. JUSTICE STEWART joins Parts I and II of the Court's opinion, but, for the reasons stated in the dis-

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10 Wheat. 246, 293–295 (1825)—of providing administrative remissions and mitigations of statutory forfeitures in most cases where the violations are incurred "without willful negligence" or an intent to commit the offense. See 1 Stat. 122, c. 12 (1790); 1 Stat. 506 (1797); Rev. Stat. §§ 5292–5293 (1874); 19 U. S. C. § 1618; *The Laura*, 114 U. S. 411, 414–415 (1885); *United States* v. *United States Coin & Currency*, 401 U. S. 715, 721 (1971). Indeed, forfeitures incurred under 21 U. S. C. § 881 (a), which served as the model for enactment of the disputed Puerto Rican statute, see n. 25, *supra*, are subject to the remission and mitigation procedures of 19 U. S. C. § 1618. See 21 U. S. C. § 881 (d). Regulations implementing § 1618 provide that, if the seized property was in the possession of another who was responsible for the act which resulted in the seizure, the petitioner must produce evidence explaining the manner in which the other person acquired possession and showing that, prior to parting with the property, he did not know or have reasonable cause to believe that the property would be used in violation of the law or that the violator had a criminal record or a reputation for commercial crime. 19 CFR § 171.13 (a). These provisions are also extended to those individuals holding chattel mortgages or conditional sales contracts. 19 CFR § 171.13 (b). See also 18 U. S. C. § 3617 (b), establishing standards for judicial remission and mitigation of forfeitures resulting from violations of the internal revenue laws relating to liquor.

senting opinion of MR. JUSTICE DOUGLAS, he would hold that the forfeiture of property belonging to an innocent and nonnegligent owner violates the Fifth and Fourteenth Amendments.

MR. JUSTICE WHITE, with whom MR. JUSTICE POWELL joins, concurring.

I join the Court's opinion, and agree that there was no constitutional necessity under *Fuentes* or any other case in this Court to accord the owner-lessor of the yacht a hearing in the circumstances of this case. I add, however, that the presence of important public interests which permits dispensing with a preseizure hearing in the instant case, is only one of the situations in which no prior hearing is required. See *Mitchell* v. *Grant*, *ante*, p. 600; *Arnett* v. *Kennedy*, *ante*, p. 134 (WHITE, J., concurring).

MR. JUSTICE DOUGLAS, dissenting in part.

While I agree that Puerto Rico is a State for purposes of the three-judge court jurisdiction, I dissent on the merits.

The discovery of marihuana on the yacht took place May 6, 1972. The seizure of the yacht took place on July 11, 1972—over two months later. In view of the long delay in making the seizure where is that "special need for very prompt action" which we emphasized in *Fuentes* v. *Shevin*, 407 U. S. 67, 91? The Court cites instances of exigent circumstances—seized poisoned food, dangerous drugs, failure of a bank, and the like. But they are inapt.

Fuentes v. *Shevin*, involved a contest between debtor and creditor and a resolution of private property rights not implicated in an important governmental purpose. Here important governmental purposes are involved. As

to that type of case we said in *Fuentes:* "First, in each case, the seizure has been directly necessary to secure an important governmental or general public interest. Second, there has been a special need for very prompt action. Third, the State has kept strict control over its monopoly of legitimate force: the person initiating the seizure has been a government official responsible for determining, under the standards of a narrowly drawn statute, that it was necessary and justified in the particular instance. Thus, the Court has allowed summary seizure of property to collect the internal revenue of the United States, to meet the needs of a national war effort, to protect against the economic disaster of a bank failure, and to protect the public from misbranded drugs and contaminated food." 407 U. S., at 91–92.

Postponement of notice and hearing until after seizure of the vessel apparently was not needed here, as the District Court held. Yet after that two-month delay, forfeiture of the vessel is ordered without notice to the owner and without just compensation for the taking. On those premises this is the classic case of lack of procedural due process.

The owner on the record before us was wholly innocent of knowing that the lessee was using the vessel illegally. To analogize this case to the old cases of forfeiture of property of felons is peculiarly inappropriate. Nor is this a case where owner and lessee are "in cahoots" in a smuggling venture or negligent in any way. The law does provide for forfeitures of property even of the innocent. But as Mr. Chief Justice Marshall said in *Peisch* v. *Ware,* 4 Cranch 347, 365: "[T]he law is not understood to forfeit the property of owners or consignees, on account of the misconduct of mere strangers, over whom such owners or consignees could have no control."

The lessee of the vessel was, of course, no stranger.

Here unlike *United States* v. *One Ford Coach*, 307 U. S. 219, 238–239 (DOUGLAS, J., dissenting), there is no suggestion that the lessee was a mere strawman for runners of drugs. Even where such ambiguous circumstances were present the Court refused to impose forfeiture of an auto running illegal whiskey and belonging to those who acted "in good faith and without negligence." *Id.*, at 236.

The present case is one of extreme hardship. The District Court found that the owner "did not know that its property was being used for an illegal purpose and was completely innocent of the lessee's criminal act. After the seizure and within the time allowed by law, the Superintendent [of the Police] notified lessee. Plaintiff was never notified and, since lessee did not post bond, the yacht was forfeited to the Commonwealth of Puerto Rico. It was not until plaintiff attempted to recover possession of the yacht after lessee had defaulted in the rental payments that plaintiff learned of its forfeiture." 363 F. Supp. 1337, 1340. Moreover, the owner had included in the lease a prohibition against use of the yacht for an unlawful project.

If the yacht had been notoriously used in smuggling drugs, those who claim forfeiture might have equity on their side. But no such showing was made; and so far as we know only one marihuana cigarette was found on the yacht. We deal here with trivia where harsh judge-made law should be tempered with justice. I realize that the ancient law is founded on the fiction that the inanimate object itself is guilty of wrongdoing. *United States* v. *United States Coin & Currency*, 401 U. S. 715, 719–720. But that traditional forfeiture doctrine cannot at times be reconciled with the requirements of the Fifth Amendment. *Id.*, at 721. Such a case is the present one.

Some forfeiture statutes are mandatory, title vesting in the State when the forfeiting act occurs. *United States* v. *Stowell*, 133 U. S. 1, 19. Others are conditional, forfeiture occurring only if and when the State follows prescribed procedures. *One 1958 Plymouth Sedan* v. *Pennsylvania*, 380 U. S. 693, 699. Some forfeiture statutes exclude from their scope, property used in violation of the law as to which the owner is not "a consenting party or privy." See 19 U. S. C. § 1594. Some provide for discretionary administrative or judicial relief from forfeiture if the forfeiture was incurred without willful negligence or without any intention on the part of the owner to violate the law, 19 U. S. C. § 1618, or if the owner had at no time any knowledge or reason to believe that the property was used in violation of specified laws, 18 U. S. C. § 3617 (b); *United States* v. *One Ford Coach*, 307 U. S. 219.

Puerto Rico, however, has no provision for mitigation in case the owner of the seized property is wholly innocent of any wrongdoing. And, as the Court says, these absolute, mandatory forfeiture procedures have been supported at least by much dicta in the cases.

But in my view, there was a taking of private property "for public use" under the Fifth Amendment, applied to the States by the Fourteenth, and compensation must be paid an innocent owner. Where the owner is in no way implicated in the illegal project, I see no way to avoid paying just compensation for property taken. I, therefore, would remand the case to the three-judge court for findings as to the innocence of the lessor of the yacht—whether the illegal use was of such magnitude or notoriety that the owner cannot be found faultless in remaining ignorant of its occurrence.

The law of deodands* was at one time as severe as the rule applied this day by the Court. See 34 Law Mag. 188–191 (1845). Its severity was tempered by juries who were sustained by the King's Bench, *id.*, at 191. The "great moderation" of the jurors in light of "the moral innocence of the party incurring the penalty," *id.*, at 190, is an example we should follow here. While the law of deodands does not obtain here (cf. *Goldsmith-Grant Co.* v. *United States*, 254 U. S. 505, 510–511; *United States* v. *One Ford Coupe*, 272 U. S. 321, 333), the quality of mercy is no stranger to our equity jurisdiction, *Hecht Co.* v. *Bowles*, 321 U. S. 321, 329–330; *United States* v. *Wiltberger*, 5 Wheat. 76, 95.

*The law of deodands starting with Exodus 21:28 is related by O. Holmes, The Common Law 7 *et seq.* (1881). Deodand derives from *Deo dandum* (to be given to God). "It was to be given to God, that is to say to the church, for the king, to be expended for the good of his soul." *Id.*, at 24.